In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES, APPELLANT,
v.
ALEXANDER MURPHY & CO.

APPLICATION FOR A WRIT OF CERTIORARI TO REVIEW A JUDGMENT OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The Attorney-General, on behalf of the United States, respectfully prays for a writ of *certiorari* to require the above-entitled cause to be certified to this court for review and determination, pursuant to the provisions of § 6 of the act entitled "An act to establish circuit courts of appeals," etc., approved March 3, 1891. Said cause arose under the customs administrative act of June 10, 1890, a protest or notice of dissatisfaction having been filed by the importer with the collector of customs for the collection district and port of New York, which protest was overruled by the Board of General Appraisers, to review whose decision a petition was filed by said Alexander Murphy & Co. The circuit court reversed the decision

of said Board, and the judgment of the circuit court was affirmed by the circuit court of appeals for the second circuit.

Amount involved.—I am informed by the Secretary of the Treasury that the amount directly involved in the present case is $520.32, but that the amount indirectly involved and which depends upon its decision is $346,190.10.

The record.—As in other cases arising under the customs administrative act, the record is somewhat informal. It shows importers' protest and the letter of the collector transmitting the papers to the Board of General Appraisers. It also sets out the petition for review of the decision of the Board of General Appraisers by which the proceedings in court were commenced. This petition is signed "Alex. Murphy & Co., petitioners, by Curie, Smith & Mackey, attorneys." It is entitled, "In the matter of the application of Alexander Murphy & Co., for a review of the decision of the General Appraisers as to the rates and amount of duties on certain merchandise imported by them per S. S. *Waesland*. Date of entry, August 30, 1894. Entry No. 126,045." It does not appear on the record whether petitioner is a firm or a corporation, for in these informal proceedings under the customs administrative act it is not customary, nor is it deemed essential, to describe the petitioners with the particularity used in court pleadings. Whether or not this be good practice, no question can be now raised in this case.

Statement of facts.—The goods in question were imported August 29, 1894. They were treated by the col-

lector and by the Board of General Appraisers as dutiable under the tariff act of October 1, 1890, whereas the circuit court and circuit court of appeals have treated them as dutiable under the tariff act of August 28, 1894. The facts relating to them are contained in a stipulation of counsel as follows (Rec., p. 21):

> That the merchandise in controversy is worsted dress goods made from the fleece of the sheep, which has been combed and spun into worsted yarn, and is not composed of the hair of the camel, goat, alpaca, or other animal than sheep.

Tariff provisions.—The goods in question, if dutiable under the act of 1890, should pay 12 cents per square yard and 50 per cent *ad valorem* (par. 395); and if dutiable under the act of 1894, should pay 50 per cent *ad valorem* (par. 283). The latter act took effect August 28. The goods were imported August 29 as above stated. The act provided as follows (par. 297):

> The reduction of the rates of duty herein provided for *manufactures of wool* shall take effect January 1, 1895.

The paragraph just quoted is the last contained under Schedule K in the act of 1894, whose heading is "Wool and manufactures of wool." The schedule, however, contains not only woolen goods, but goods made of the hair of other animals and even (par. 295) of flax or cotton.

In paragraphs 280 to 286, inclusive, it contains a series of provisions relating to yarns, cloths, etc., made wholly or in part of "wool, *worsted*, the hair of the camel, goat, alpaca, or other animals."

Are worsted goods "manufactures of wool" within the meaning of paragraph 297?

The circuit court and circuit court of appeals held:

First. That paragraph 297 above quoted does not cover everything in Schedule K, notwithstanding the heading to that schedule. In this view the Department of Justice entirely concurs. Solicitor-General Maxwell, in an opinion rendered October 9, 1894, held that the paragraph did not cover cotton or flax goods or manufactures of the hair of any animals other than sheep (21 Op., 66).

Second. That worsted goods are not "manufactures of wool" within the meaning of the paragraph quoted, although they are in fact manufactures of the wool of the sheep. It is respectfully submitted that this holding, whereby the United States is deprived of $346,000, is contrary to the plain intent and true meaning of the act of 1894, especially in the case of worsted cloths; and this for the following reasons:

I. There is not, and never has been, any doubt that worsted is a manufacture of wool.

Both the American Encyclopædia and the Encyclopædia Britannica treat of worsted under the head of "wool" and as a manufacture of wool.

Dr. Johnson defined it as "woolen yarn; wool spun." This definition was too broad, but both Webster and Worcester treat it as a variety of yarn or thread, spun of wool.

The Century Dictionary, stating that it is "so called" from Worsted, now Worstead, in Norfolk, where it was first manufactured," gives the following definitions, in

which it substantially coincides with the Imperial and and Encyclopædic Dictionaries:

> I. *n.* and *a.* A variety of woolen yarn or thread, spun from long-staple wool which has been combed and in the spinning is twisted harder than usual [etc.].
>
> II. *a.* Consisting of worsted; made of worsted yarn; as *worsted* stockings.

The distinction between worsted and so-called "woolen" yarns is very difficult to define. The classifications to some extent overlap. The Encyclopædia Britannica (Little, Brown & Co.'s edition, 1888, XXIV, 658), says:

> The fundamental distinction between the classes rests in the crossing and interlacing of the fibers in preparing woolen yarn—an operation confined to this alone among all textiles, while for worsted yarn the fibers are treated, as in the case of all other textile materials, by processes designed to bring them into a smooth, parallel relationship to each other.

In *Cohn* v. *Seeberger* (30 Fed. Rep., 425, 426), Judge Blatchford states the general distinction very clearly:

> Worsted is made by combing long-fibered wools so that the fibers shall lie or be arranged alongside each other, while wool is treated by carding so as to interlap the fibers with each other.

II. The learned district judge (p. 22) fell into the error of saying that the earlier tariff acts "recognized wool and worsted as different materials." This is not the fact. They very distinctly recognized worsted as a manufacture of wool, although dutiable at rates different from those imposed upon manufactures of wool not specifically

provided for. Congress and this court have treated worsted *not as something different from wool, but as a term more specific than wool.* While there are chance expressions in the opinions from which it might be inferred that worsted was not wool, yet the principle of these decisions is clearly the familiar principle that as between different terms, otherwise equally applicable to the same articles, the more specific governs. (See *Bogle* v. *Magone*, 152 U. S., 623, 626, and cas. cit.; *Seeberger* v. *Cohn*, *infra*.)

The tariff act of April 27, 1816, ch. 107 (3 Stat., 310), lays a general duty on "woolen manufactures of all description or of which wool is the material of chief value, *excepting* blankets, woolen ru[illegible]nd *worsted stuff goods*." The tariff act of May 22, 18[illegible] ch. 126 (4 Stat., 25), uses substantially similar language. The tariff act of May 19, 1828, ch. 55 (4 Stat., 271, 272), lays a schedule of rates on manufactures of wool "*except* carpetings, blankets, *worsted stuff goods*, bombazines, hose, mitts, gloves, capes, and beltings."

The provision first discussed by this court was the second paragraph of the tariff act of July 14, 1832, ch. 227, § 2 (4 Stat., 584). This paragraph is headed "On manufactures of wool or of which wool is a component part." It lays special rates on worsted stuff goods, shawls, and other manufactures of silk and worsted, on worsted yarn, on woolen yarn, and on other articles specially named; and it winds up with a general provision concerning "all other manufactures of wool or of which wool is a component part, and ready-made clothing."

It will be noticed that a distinction is made between *worsted* and *woolen* in the act, although both are rated as *manufactures of wool*. In *Elliott* v. *Swartwout* (10 Pet., 137, 152) the court uses language somewhat loosely, as if worsted was not a manufacture of wool; but by familiar rules this language must be "read in the light of the facts of the case." (*Barney* v. *Rickard*, 157 U. S., 352, 364; *Sonn* v. *Magone*, 159 U. S., 417, 423.) The question before the court was whether the definition of "worsted" in the statute should be determined by its commercial designation; and it was admitted in the record "that worsted is made out of wool by combing, and thereby becomes a distinct article, well known in commerce under the denomination of worsted."

Subsequent tariff acts up to the present time have mentioned worsted as well as wool; but in a hundred other familiar instances as well, Congress has used specific as well as general terms applicable to the same article. Worsted has always been included under the wool schedule; nor has Congress ever indicated that it supposed worsted to be anything else than a manufacture of wool.

In *Seeberger* v. *Cahn* (137 U. S., 95, 97) this court recognizes that "worsted is doubtless a product of wool;" and while the court said that "a manufacture of worsted can not be considered as a manufacture of wool within the meaning of this statute," it evidently had in mind the rule of interpretation just previously stated, as follows:

> That when goods of a particular kind, which would otherwise be comprehended in a class, are subjected to a distinct rate of duty from that imposed upon the class generally, they are taken out of that class for the purpose of the assessment of duties.

Thus neither our past tariff legislation nor our judicial decisions require cloths made of wool to be treated as if they were not made of wool, simply because the fibers lie alongside of each other, instead of being interlaced, in the yarn of which the cloths are made.

We shall now endeavor to show that—

III. The construction given to this act by the lower courts is contrary to its plain intent.

On what theory can Congress possibly be supposed to have desired a postponement of the reduction of duties on woolen goods, technically so called, until January 1, 1895, while the reduced duties were to go immediately into effect upon worsted goods in August, 1894?

There was only one possible reason for the action of Congress in postponing the reduction of rates. The act of 1894 suddenly abolished, among other high duties, those which had so long prevailed with respect to wool. The only possible reason for postponing the reduction of duties on woolen goods was the injustice which manufacturers of these goods would suffer, in case they had already laid in a large stock of raw material, which they still had on hand. It must therefore be presumed that Congress, while deliberating upon the new tariff bill, had ascertained that woolen manufacturers were carrying a stock of raw material which equitably they should be allowed a few months' time to work off.

This court can take judicial notice of facts generally known. It is generally known that manufacturers of wool were carrying such a stock, so that it would have been inequitable to put the new duties on manufactures

of wool directly into operation. Their case was one especially calling for special attention in this, that under the previous acts the duties on woolen manufactures were "compound," containing not only an *ad valorem* rate, but also a specific rate, which latter was regarded as compensatory for the duties paid by the manufacturers upon the raw material, and that this specific rate was to be stricken out for the precise purpose of abolishing what would be a mere gratuity when the duties upon the raw material should be abolished.

The only purpose, therefore, which can possibly be imputed to Congress in postponing the reduction of duties on manufactures of wool is applicable to worsted goods as fully as to any of the other manufactures. It may be asked why hair goods were not similarly treated, but there may not have been such a stock of imported hair on hand.

It must be remembered that there is no such article as "worsted," pure and simple. While "worsted" is familiarly used as a noun, from which it might be supposed that there was a specific article called "worsted" out of which worsted goods were manufactured, this is not the fact. There are "worsted yarns," "worsted cloths," etc., but there is no "worsted" as distinguished from the yarns or the cloths. The "guide to the meaning of a statute is found in the evil which it is designed to remedy; and for this the court properly looks at contemporaneous events, the situation as it existed." * * * (*Holy Trinity Church* v. *United States*, 143 U. S., 457, 463; *United States* v. *Union Pacific R. R. Co.*, 91 U. S.,

72, 79; *United States* v. *Perry*, 146 U. S., 71, 73; *People* v. *Supervisors*, 43 N. Y., 430); and the intent of the legislature governs the construction even of a penal statute. (*United States* v. *Lacher*, 134 U. S., 624.)

IV. Whatever might be the case as to worsted yarns, the articles now in question are to be classified as woolens, on account of the so-called Dingley Act of May 9, 1890, ch. 200, discussed in *United States* v. *Ballin* (144 U. S., 1), which provides—

> That the Secretary of the Treasury be, and he hereby is, authorized and directed to classify as woolen cloths all imports of worsted cloth, whether known under the name of worsted cloth or under the names of worsted or diagonals, or otherwise.

This act has never been expressly repealed (*Henderson's Tobacco*, 11 Wall., 621, 656); and the authorities are overwhelmingly opposed to the theory that it has been repealed by implication. (*Stuart* v. *Maxwell*, 16 How., 150; *United States* v. *67 Packages*, 17 How., 85; *Ex parte Crow Dog*, 109 U. S., 556; *Saxonville Mills* v. *Russell*, 116 U. S., 13; *Chicago Railway Co.* v. *United States*, 127 U. S., 406, 409; *Coke* v. *Coke*, 137 U. S., 682, 686; *Frost* v. *Wenie*, 157 U. S., 46, 58.)

I respectfully submit that the decisions of the lower courts rest upon a purely artificial and technical construction of the statute; and that, as they involve a heavy loss to the United States Treasury, a writ of *certiorari* should be granted.

A certified copy of the entire record of the case in the circuit court of appeals, including the opinion, is filed as part of this application. Notice of the application has been given to the appellees' counsel.

JUDSON HARMON,
Attorney-General.

APRIL 10, 1896.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 498.

THE UNITED STATES, APPELLANT,

vs.

ALEXANDER MURPHY & CO.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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a United States court of appeals for the second circuit. The United States, appellant, *vs.* Alexander Murphy & Co., appellees. [No. 2107.] Transcript of record. Appeal from the circuit court of the United States for the southern district of New York. Printed under the direction of the clerk. United States circuit court of appeals, second circuit. Filed Aug. 20, 1895. James C. Reed, clerk.

1 United States circuit court for the southern district of New York. In the matter of the application of Alexander Murphy & Co. for a review of the decision of the General Appraisers, as to the rates and amount of duties on certain merchandise imported by them per S. S. "Waesland." Date of entry, Aug. 30/94. Entry No. 126045. 72602-A—12691.

To the honorable the circuit court of the United States for the southern district of New York:

Your petitioners, Alexander Murphy & Co., being dissatisfied with a decision made on or about the 17th day of September, 1894, by the Board of General Appraisers designated by the Secretary of the Treasury, for and on duty at the port of New York, reviewing and affirming the decision of the collector of the port of New York as
2 to the rate and amount of duty chargeable on certain merchandise imported at said port by your petitioners as above specified, respectfully make application to the court and set forth herein the errors of law and fact complained of, to wit:

The said merchandise consists of a consignment, among other goods, of worsted dress goods. The same was classified and assessed by said collector for duty at the rate of 12 cts. per sq. yd. and 50% ad valorem. Your petitioners being dissatisfied with the said decision, gave notice to said collector accordingly, within ten days after the ascertainment and liquidation of the duties, as aforesaid, setting forth the reasons for their objection thereto, claiming the said merchandise to be dutiable under Schedule K of the tariff act of August, 1894, paragraph 283, at 40% or 50% ad valorem, according to the value thereof.

Thereafter the said Board of General Appraisers, proceeding to hear and determine the questions of law and fact involved in said matters, affirmed the decision of the said collector in the premises.

And for the errors of law and fact in the decision of the said Board herein complained of, your petitioners say:

First.—That said Board of Appraisers erred in not finding as matters of fact, that worsted is and has been in this country for many years, a well recognized, separate, and distinct commodity from wool, and that this distinction has been and is, both a popular and commercial distinction.

Second.—That said Board of Appraisers erred as matters of law:

(a) In not holding that worsted is not wool, and that worsted goods are not woolen goods.

(b) In holding as follows: "We hold, therefore, that paragraph 297, in its scope and application, is as broad as the title of the schedule, and applicable to all merchandise provided for therein;
7 3 that duty upon the dress goods in question was lawfully imposed under the provisions of paragraph 395 of the act of October 1st, 1890, which as to such merchandise continues in force until January 1st, 1895."

(c) In overruling your petitioners' protest.

(d) In not holding that said merchandise was dutiable under Schedule K of the tariff act of August, 1894, paragraph 283, at 40% or 50% ad valorem, according to the value thereof.

Accordingly, your petitioners respectfully pray the court to order the said Board of General Appraisers to return to the court the record
8 and evidence taken by the said Board, together with a certified statement of the facts involved in the above cases, and of its decision thereon; and thereupon, and upon such further evidence as may be hereafter taken pursuant to the statute in such cases made and provided, to proceed to review said decision, and to determine the questions of law and fact involved in the same.

Dated, New York, Oct. 15, 1894.

ALEX. MURPHY & CO.,
Petitioners.

By CURIE, SMITH & MACKIE,
9 *Attorneys, 44 and 46 Exchange Place, New York City.*

(Endorsed:) 2107. United States circuit court for the district of New York. In the matter of the application of Alex. Murphy & Co., for a review of the decision of the General Appraisers, as to the rates and amount of duties on certain merchandise imported by them per S. S. "Waesland," Aug. 30/94. Petition. Curie, Smith & Mackie, attorneys for petitioners, 44 & 46 Exchange Place, New York City. U. S. circuit court. Filed Oct. 15, 1894. John A. Shields, clerk.

10 4 Know all men by these presents, that I, William H. Northup, am held and firmly bound unto the United States of America in the sum of fifty dollars, to be paid to the said United States of America.

For the payment of which, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with my seal and dated the 13th day of October, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas, Alexander Murphy & Co. have applied to the circuit court of the United States for the southern district of New York, for
11 a review of the questions of law and fact involved in certain decisions of the Board of United States Appraisers, made upon the entry of certain merchandise imported by them per S. S. "Waesland," Aug. 30/94. T26045.

Now, therefore, the condition of this obligation is such that if the above-named Alexander Murphy & Co. shall prosecute said proceeding with effect, and pay all damages and costs which shall be awarded

against them therein if they shall fail to make said proceeding good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

[SEAL.] WM. H. NORTHUP. 12

Sealed and delivered and taken and acknowledged, this 13th day of October, 1894, before me.

[SEAL.] THOS. H. THOMPSON,
Notary Public, Kings County.

Certificate filed in New York Co.

5 UNITED STATES OF AMERICA, 13
Southern District of New York, ss:

William H. Northup, being duly sworn, deposes and says that he does business in the southern district of New York, in the city of New York; that he is worth the sum of one hundred dollars over and above all his just debts and liabilities.

WILLIAM H. NORTHUP.

Sworn to this 13th day of Oct., 1894, before me,

[SEAL.] THOS. H. THOMPSON,
Notary Public, Kings County. 14

Certificate filed in New York Co.

This bond is approved as to form and amount and sufficiency of surety.

Dated New York, Oct. 15, 1894.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) 2107. United States circuit court for the southern district of New York. In the matter of the application of Alex. Murphy & Co. for a review of the decision of the General Appraisers, 15 as to the rates, &c., of duties on certain merchandise imported by them per S. S. "Waesland," Aug. 30/94. Bond for costs on application for review. Curie, Smith & Mackie, attorneys for the petitioners, 44 & 46 Exchange Place, New York City. U. S. circuit court, filed Oct. 15, 1894. John A. Shields, clerk.

6 At a stated term of the United States circuit court for the 16 southern district of New York, held at the United States court and post-office building, in the city of New York, on the 15th day of October, 1894.

Present, Hon. E. Henry Lacombe, circuit judge.

In the matter of the application of Alexander Murphy & Co. for a review of the decision of the General Appraisers as to the rates, 17 &c., of duties on certain merchandise imported by them per "Waesland," Aug. 30/94. 126045.

Upon reading and filing the annexed petition of Alexander Murphy & Co., importers of the merchandise therein described, and on motion of Curie, Smith & Mackie, attorneys for said petitioners,

It is ordered that the Board of Appraisers at the port of New York return to this court the record and the evidence taken by them
18 in each of the above-entitled matters, together with a certified statement of the facts involved in the case and their decision thereon.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) 2107. United States circuit court for the southern district of New York. In the matter of the application of Alex. Murphy & Co. for a review of the decision of the General Appraisers as to the rates, &c., of duties on certain merchandise imported by them per S. S. "Waesland," Aug. 30/94. Summons to return record. Curie, Smith & Mackie, attorneys for petitioners, 44 & 46 Exchange Place, New York City. U. S. circuit court. Filed Oct. 15, 1894. John A. Shields, clerk.

19 7 In the circuit court of the United States for the southern district of New York. In the matter of the application of Alex. Murphy & Co. for a review of the decision of the Board of General Appraisers as to the rate and amount of duty on certain merchandise imported by them in the vessel "Waesland," Aug. 30, 1894. Suit No. 2107. Return of the Board of United States
20 General Appraisers to the order of Hon. E. Henry Lacombe, circuit judge. Dated New York, October 19th, 1894.

The Board of United States General Appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them:

21 They state that a letter (hereto annexed, marked Exhibit A) was received from the collector of customs at New York, submitting, under the provisions of sec. 14 of the act of June 10, 1890, the protest marked Exhibit B, described as follows:

Collector's No.	Board No.	Protestant.	Vessel.	Dt. entry.
12691.	72602—A.	A. Murphy & Co.	"Waesland."	Aug. 30/94

22 8 That on the 17th day of September, 1894, the Board of General Appraisers rendered its decision in the matter of said protest No. 72602—A, a copy of which decision is hereto annexed, marked Exhibit C.

And in the examination and decision of this case the Board had under consideration Ure's Dictionary of Arts, Manufactures, and Mines, seventh edition, volume 1, page 105, under the title Alpaca.

Also same work, volume 3, p. 135 et seq., under the title Llama.
23 Also same work, volume 3, p. 359 et seq., under the title Mohair.

Also same work, volume 3, p. 1184, under classification of Woolen Manufacture.

Also Spous' Encyclopædia of the Industrial Arts, Manufactures, and Raw Commercial Products, vol. 2, p. 2047 et seq., under the title Woolen Manufactures.

Also reports from the consuls of the United States, June, 1887,
24 No. 79.

9

EXHIBIT A.

25

OFFICE OF THE COLLECTOR OF CUSTOMS,
PORT OF NEW YORK,
September 13, 1894.

Hon. BOARD OF GENERAL APPRAISERS,
Port of New York.

GENTLEMEN: I transmit herewith protest No. 12691, of Alexander Murphy & Co., from the assessment of duty as made by this office on certain merchandise covered by their consumption entry, No. 126045, which consumption entry was made by them on August 29, 1894, the goods being imported the same day.

26

Claim is made by the protestants that the merchandise is liable to duty under paragraph 283 of the act of August 28, 1894.

The merchandise was returned by the appraising officer as worsted dress goods; hence, in the liquidation of the entry, duty at the rate of 12 cents per square yard and 50 % ad valorem was imposed by this office, under the specific provisions of par. 395 of the act of October 1, 1890.

The action of this office in assessing duty under paragraph 395 of the act of October 1, 1890 (although the goods were imported after the act of August 28, 1894, went into effect), was by reason of the specific provisions of par. 297 of the act of August 28, 1894, as 27 defined by the honorable Secretary of the Treasury in his telegram to this office dated August 27, 1894, Department's Circular No. 125.

The entry and invoice covered by the above protest are enclosed herewith.

Respectfully, yours,

JAMES T. KILBRETH,
Collector.

(Enclosures.)

(Endorsed:) 45709 Po. Office U. S. General Appraisers, New York. Received Sep. 13, 1894, 3.50 p. m. No. of inclosures, 3. E. D. W.

10

EXHIBIT B.

28

NEW YORK, *September 15, 1894.*

Hon. JAMES T. KILBRETH,
Collector of Customs, New York.

SIR: We hereby protest against your decision, liquidation, and assessment of duties as made by you on our importation herewith enumerated and described in the entries thereof, reference to which is made for more certainty of description and particulars.

We claim that the extension of the date for the reduction of rates of duties provided for by paragraph 297 of Schedule K of said act of August 8, 1894, applies only to such manufactures of wool as are 29 not specially mentioned in the aforesaid Schedule K, and particularly excludes all manufactures, whether specially named in said Schedule K or not, composed wholly or in part of worsted, the hair of the camel, goat, alpaca, or other animals. We claim that the proper rates

of duty to be assessed under said act of August 27th, 1894, on the importations herein mentioned are as follows:

On dress goods, coat linings, Italian cloths, bunting, and goods of similar description and manufacture, at 40 per cent, or 50 per cent ad valorem, according to value, under paragraph 283.

We have paid these duties for the purpose of obtaining possession
30 of our goods, and shall hold you and the Government responsible for all excess of duty illegally exacted.

Vessel.	From.	No. of entry.	Date of liq'dn.	Marks and numbers of packages.	Date of payment.
Str. "Waesland."	Antwerp.	126045.	Sept. 13/94.	[B] 1082, 1085, & 1087—3 cases black serges.	Aug. 30/94.

Duties assessed at 12c., or 50 %, under paragraph 395 of tariff act of Oct. 1, 1890.

ALEX. MURPHY & Co.

Please address, care Alex. Murphy & Co., 48 Exchange Place, New York.

72602.

31 11 (Endorsed:) 12691. A. Murphy & Co. "Waesland." Wool dress goods. 45709 Po. Vessel, e "Waesland." Entry, 1894, Aug. 30; liq'ed, 1894, Sept. 13; protested, 1894, Sept. 13. 72602. Custom-house, New York, Sept. 13, 1894, received.

EXHIBIT C.

(G. A. 2769.)

[Act of 1894—Date of going into effect of wool schedule.]

Before the U. S. General Appraisers at New York, September 17,
32 1894.

In the matter of the protest 72602A—12691, of Alex. Murphy & Co., against the decision of the collector of customs at New York, as to the rate and amount of duties chargeable on certain women's and children's dress goods, operation of wool schedule, imported per "Waesland," August 30, 1894.

Opinion by Sharretts, General Appraiser.

We find—

(1) That Messrs. Alex. Murphy & Co. imported into the port of
33 New York, August 20, 1894, certain merchandise which was assessed for duty at 12 cents per square yard and 50 per cent ad valorem, under the provisions of paragraph 395 of the act October 1, 1890, and which the importers claim is dutiable at 40 per cent or 50 per cent ad valorem, according to value per pound, under paragraph 283 of the tariff act of August 28, 1894.

(2) That said merchandise consists of fabrics commercially known as women's and children's dress goods, composed of worsted weighing less than 4 ounces to the square yard.

12 The importers state in their protest generally the claim— 34

That the extension of the date of the reduction of rates of duties provided for by paragraph 297 of Schedule K of the act of August 28, 1894, applies only to such manufactures of wool as are not specially mentioned in the aforesaid Schedule K, and particularly excludes all manufactures whether specially named in said Schedule K or not, composed wholly or in part of worsted, the hair of the camel, goat, alpaca, or other animals.

In undertaking to construe the force and effect of paragraph 297, it is proper to take into consideration the tariff law which had been in force some time previous to the new enactment, and to consider the 35
reasons which led Congress to make a specific provision concerning the date when the new Schedule K should go into effect. It is matter of common knowledge, and is shown in the proceedings in Congress in enacting the present law making a reduction in the high rates of duty previously in force, that both manufacturers and dealers had in stock large quantities of merchandise upon which they had paid high rates of duty to the Government; that the raw material entering into the fabrication of the merchandise covered by Schedule K had been subject to such rates of duty, and that any merchandise fabricated therefrom, if put upon the market when lower rates were 36
in vogue, would cause great loss, if not ruin, to many individuals; and, therefore, to allow all interests to adjust their business to the new rates, a future date was named when they should go into effect, postponing the time sufficiently to allow the marketing of merchandise in hand, or which might be fabricated from the raw materials previously imported.

If, then, we look to the reasons which governed Congress in making this provision, we shall find that the former high rates of duty applied to all the animal fibers mentioned in paragraphs 376
13 to 378 inclusive, of the tariff act of 1890, and to all manufactures thereof. Schedule K in the act of 1890, as in the act 37
of August 28, 1894, is entitled "Wool and manufactures of wool," and embraces therein substantially all merchandise composed of fibers or fleeces from animals. "Manufactures of wool" is not a term of commercial designation, but as used in the title of the schedule and in paragraph 297, declaring the date when it shall go into effect, it is a broad, general, and comprehensive designation covering all manufactured products specified in the schedule, embracing goods fabricated from wool, or from wool which has been converted into worsted, or from the hair of the camel, goat, alpaca, or other animals.

The popular definitions of the various fibers referred to in the 38
schedule indicate that the words "manufactures of wool" are comprehensive. The definition of wool, as given in the Century Dictionary, is as follows:

"The fine, soft, curly hair which forms the fleece or fleecy coat of the sheep and some other animals, as the goat and alpaca, in fineness approaching fur."

Webster:

Alpaca—A thin kind of cloth made from the wool of the Alpaca."

"Mohair—The long silky hair or wool of the Angora goat."

39 "Worsted—Well-twisted yarn spun of long-staple wool which has been combed to lay the fibers parallel."

We have to some extent a legislative construction of the meaning of the word "woolen," in paragraph 280, showing what Congress understood broadly as embraced within the term, for it is therein provided that "on woolen and worsted yarns, made wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals," duty shall be levied as therein specified, thus showing that the hair of the camel, goat, alpaca, or other animals is included within the broader term of woolen.

40 14 According to the claims of the importers, paragraph 297 only affects one item, which is contained in paragraph 283, namely: "All manufactures composed wholly or in part of wool * * * not specially provided for in this act."

Such a narrow construction of the act we must at once reject as contrary to the intention of Congress. The true purpose of this legislation can be carried into effect by a broad and liberal interpretation of the provision as applied to all the circumstances and conditions designed to be remedied thereby. It was first provided in the House bill, known as the Wilson bill, that:

41 "The reduction of the rates of duty herein provided for manufactures of wool shall take effect December second, eighteen hundred and ninety-four, and on all rates of duty in the woolen schedule, except on carpets, there shall be a reduction of one per centum ad valorem, to take effect on the first day of July, eighteen hundred and ninety-six, and thereafter of a like discount on the first day of July, eighteen hundred and ninety-seven, eighteen hundred and ninety-eight, eighteen hundred and ninety-nine, and nineteen hundred, respectively."

This paragraph as it now appears was amended in the Senate simply to extend the date when the schedule should go into effect, and to
42 eliminate the annual reduction of 1 per cent provided in the House bill.

It is our opinion that it was the intention of Congress that Schedule K, of the act of August 28, 1894, should, on the 1st day of January, 1895, supersede the provisions of Schedule K of the act of 1890 in the dutiable classification of all the manufactures specified in that schedule of the latest act, but that, where it has omitted to provide in Schedule K of the latest act, either in general terms or denominatively, for the merchandise provided for in Schedule K of the act of 1890, the goods so omitted, which consist mainly of raw mate-
43 15 rial, are exempted from duty in the free list of the new act, or elsewhere provided for.

We hold, therefore, that paragraph 297 in its scope and application is as broad as the title of the schedule, and applicable to all merchandise provided for therein; that duty upon the dress goods in question was lawfully imposed under the provisions of paragraph 395 of the act of October 1, 1890, which, as to such merchandise, continues in force until January 1, 1895.

The protest is overruled.

(Sd.) WILBUR F. LUNT,
J. B. WILKINSON, Jr.,
44 THAD. S. SHARRETTS,
Board of U. S. General Appraisers.

And for a certified statement of the facts involved in said matter, as ascertained by them, the said Board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said Board than such as are shown by said decision and other exhibits hereto attached.

WILBUR F. LUNT,
J. B. WILKINSON, Jr., 45
Board of U. S. General Appraisers.

(Endorsed:) No. 2107. U. S. circuit court, southern district of New York. In the matter of the application of Alex. Murphy & Co. for a review of the decision of the Board of U. S. General Appraisers as to the rate and amount of duty on certain imported merchandise. Return of the Board of U. S. General Appraisers. U. S. circuit court. Filed Oct. 20, 1894. John A. Shields, clerk.

16 United States circuit court, southern district of New York. 46

In the matter of the application of Alexander Murphy & Co. for a review of the decision of the General Appraisers as to the rates, &c., of duties on certain merchandise imported by them per 47 S. S. "Waesland," Aug. 30/94. No. 2107.

To the honorable the circuit court of the United States for the southern district of New York:

Your petitioners, Alexander Murphy & Co., respectfully represent:

First. That a return from the Board of United States General Appraisers in the above-entitled matter was filed in the office of the clerk of this court on the 20th day of October, 1894. 48

Second. That your petitioners desire to present further evidence in the above-entitled matter.

Wherefore, your petitioners pray that an order be made referring said matter to one of the General Appraisers, to take and return to said court such further evidence as may be offered.

Dated Nov. 3d, 1894.

ALEXANDER MURPHY & CO.,
By CURIE, SMITH & MACKIE,
Atty's.

17 Upon reading and filing the foregoing petition of Alexander 49 Murphy & Co., and on motion of Curie, Smith & Mackie, attorneys for said petitioners,

It is ordered that the above-entitled matter be, and the same hereby is, referred to General Appraiser George H. Sharpe, to take and return to this court such further evidence as may be offered in said matter.

Dated Nov. 3d, 1894.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) No. 2107. United States circuit court for the south- 50 ern district of New York. In the matter of the application of Alex.

Murphy & Co. for a review of the decision of the General Appraisers as to the rates, &c., of duties on certain merchandise imported by them per S. S. "Waesland," Aug. 30/94. Petition and order for further evidence. Curie, Smith & Mackie, attorneys for petitioners, 44 & 46 Exchange Place, New York City. U. S. circuit court. Filed
51 Nov. 3, 1894. John A. Shields, clerk.

52 18 United States circuit court, southern district of New York.
In the matter of the application of Alexander Murphy & Co., as to certain importations per "Waesland," Aug. 30/94. Suit "A," No. 2107.

53 *To the circuit court of the United States for the southern district of New York:*

The collector of the port of New York hereby applies for an order referring it to one of the U. S. General Appraisers, as an officer of the court, to take and return to the court such further evidence as may be offered by him.

WALLACE MACFARLANE,
54 *U. S. Attorney, Attorney for the Collector.*

55 19 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms, in the post-office building in the city of New York, on the 9th day of November, in the year of our Lord one thousand eight hundred and ninety-four.

Present, the Honorable E. Henry Lacombe, circuit judge.

56 In the matter of the application of Alexander Murphy & Co., as to certain importations per "Waesland," Aug. 30/94. Suit "A," No. 2107.

On the annexed application of the collector of the port of New York, through his attorney, Wallace Macfarlane, U. S. attorney for the southern district of New York.

It is ordered that this cause be referred to Geo. H. Sharpe, one of the U. S. General Appraisers, as an officer of the court, to take and return
57 to the court such further evidence herein as may be offered by the said collector, and that the importers or their attorneys have reasonable notice of the time and place of taking such further evidence.

E. H. LACOMBE,
U. S. Circuit Judge.

(Endorsed:) Suit "A," No. 2107. U. S. circuit court, southern district of New York. In the matter of the application of Alexander Murphy & Co., as to certain importations per "Waesland," Aug. 30/94. Application and order to take further evidence. Wallace Macfarlane, U. S. atty. and atty. for collector. U. S. circuit court, filed Nov. 10, 1894. John A. Shields, clerk.

20 United States circuit court, southern district of New York. 58

THE UNITED STATES OF AMERICA, appellant,
vs.
JOHN F. KLUMPP, JOSEPH B. BARTLEMAN AND John E. Heywood, composing the copartnership of Alexander Murphy & Co., appellees. } Suit "A," 2107. 59

Stipulation.

It is hereby stipulated by and between the counsel for the respective parties hereto that the following shall constitute the evidence taken and returned by Hon. George H. Sharpe, referee, appointed by the court herein.

"NEW YORK, *May 3, 1895.* 60

"Appearances:

"For the collector and Government: James T. Van Rensselaer, assistant U. S. attorney.

"For the importers: Curie, Smith & Mackie. (W. Wickham Smith, of counsel.)

"Mr. VAN RENSSELAER. I offer in evidence the import entry by steamer "Waesland," August 29, 1894, No. 126045, with accompanying invoice, No. 18683.

21 "Received and marked respectively Exhibit 1 and Exhibit 61 1–1.

"It is admitted by counsel for both parties hereto that the classification of the merchandise by the collector was worsted dress goods, at 12 cents per square yard and 50 per cent ad valorem, under Schedule K, paragraph 395 of the tariff act of October 1, 1890.

"It is further conceded and stipulated by counsel for the respective parties hereto that the merchandise in controversy is worsted dress goods, made from the fleece of the sheep, which has been combed and spun into worsted yarn, and is not composed of the hair of the camel, 62 goat, alpaca, or other animal than sheep."

Dated New York, July 9th, 1895.

WALLACE MACFARLANE,
U. S. Attorney, for Appellant.

CURIE, SMITH & MACKIE,
Attorneys for Appellees.

(Endorsed:) Suit A, No. 2107. U. S. circuit court, southern district of New York. United States of America, appellant, vs. Alexander Murphy & Co. Stipulation. Wallace Macfarlane, United States attorney, attorney for appellant. U. S. circuit court, filed Jul. 11, 1895. John A. Shields, clerk. 63

64 22 United States circuit court, southern district of New York.

ALEXANDER MURPHY ET AL.
vs.
THE UNITED STATES.

Townsend, district judge:

65 On August 30th, 1894, appellants imported and entered for duty at the port of New York certain worsted dress goods.

The importers claimed they were dutiable at 50 per cent ad valorem, under paragraph 263, Schedule K of the tariff act of August, 1894.

They were classified for duty at 12 cents per square yard and 50 per cent ad valorem, under the provisions of paragraph 395, Schedule K of the tariff act of October 1st, 1890.

The Board of General Appraisers sustained the assessment, and the importers appealed. The single question presented by the appeal is
66 whether these goods are dutiable under the earlier or later act.

It is admitted that these goods are made from the fleece of the sheep, and are in that sense a product of wool.

The earlier tariff acts provided rates of duty on manufactures of wool different from those on manufactures of worsted, and recognized wool and worsted as different materials. The tariff acts of 1890 and 1894, while retaining the distinction in terminology, provide the same rates of duty for woolen as for worsted goods.

The courts have repeatedly recognized and enforced this
67 23 distinction between wool and worsted, and have uniformly held that the manufactures of worsted were not manufactures of wool within the meaning of the tariff acts. Elliott v. Swartwout (10 Peters, 137); Riggs v. Frick (Taney, 100); Seeberger v. Cahn (137 U. S., 95); Ballin v. Magone (41 Fed., 921).

It is urged on behalf of the Government that the term "manufactures of wool" is used descriptively and not denominatively in this act of 1894. Paragraph 297 of said act reads as follows:

"The reduction of the rates of duty herein provided for manufactures of wool shall take effect January 1st, 1895."

68 The heading of said Schedule K is "Manufactures of wool."

In support of his contention counsel for the Government introduced in evidence various official documents, letters to the chairman of the Finance Committee of the Senate, and other papers, tending to show that the same reasons existed for a postponement of duties on all the products of the sheep's fleece.

It appears, however, that in the tariff bill as it first passed the House of Representatives there was a further provision applying to all rates of duty in the woolen schedule except carpets, which provision
69 was afterwards stricken out in the Senate.

Counsel for the Government further claims that the distinction between wool and worsted in the decision cited is based upon the fact that Congress had in these earlier acts created and preserved the distinction for tariff purposes, thus creating a statutory as contrasted with a commercial distinction, and that as this artificial distinction no longer exists it should not be applied in the construction of the present act.

But the distinction in terminology, as already shown, has
24 been uniformly preserved, and in Ballin v. Magone (41 Fed., 70
921), Judge Lacombe, referring to the provisions of the act of
1883, says:

"The tariff act itself, however, recognizes a difference between woolen and worsted articles—between goods composed of worsted and goods composed of wool. We find the words 'wool' or 'woolen' and 'worsted' used in contrast at least six times in this very schedule, and the examination of successive tariff acts back to, I think, 1816, shows an unbroken continuance of such contrasting use. It seems plain, therefore, that the words 'woolen cloths,' used in the paragraph on which the defendant relies, are to be taken as including only those 71
woolen cloths which are not worsted, or composed of worsted, within the meaning of those terms (that is, 'worsted,' or 'composed of worsted'), as used in this tariff."

In five of the instances above referred to as illustrations of this distinction the rates of duty were the same.

The schedule in question is entitled "Wool and manufactures of wool." It is well settled that the title of an act may legitimately be resorted to as an aid in determining legislative intent when that intent is otherwise ambiguous.

But the Supreme Court of the United States has recently held, in Hollender v. Magone (149 U. S., 586), and Seeberger v. Schlesinger 72
(152 U. S., 581, 1583), that such titles to the schedules in a tariff act are merely intended as general suggestions of the character of the articles within such schedule.

Under the above title are included not only articles made from the fleece of sheep, but also those made from the hair of the camel, goat, alpaca, and other animals, and certain manufactures of flax and cotton. It is not claimed by the Government that the paragraph in question refers to goods made from the hair of animals other than sheep, or to any goods except such as are composed of wool or worsted.

25 In Reiche v. Smythe (13 Wall., 162, 164), and Maddock v. 73
Magone (152 U. S., 368, 371), it is held, in reference to the construction of tariff acts, that when the same word is used in successive acts, and special meaning was attached to said word in the former act, it will be presumed, in the absence of evidence of a contrary intention, that it was intended that said word should receive the same interpretation in the later act.

It is claimed by the Government that such evidence of a contrary intention is furnished in this case by the policy of the Government, as indicated in the letters and official documents already referred to, and in the consideration of inconvenience which would arise from 74
the construction contended for by the importer.

That the distinction was directly brought to the attention of Congress and acted upon by it; that Congress has failed to use the word "worsted" in said paragraph 94; that under the title "Wool and manufactures of wool" are included articles not composed of wool, strongly suggest that Congress may not have intended to include "worsted" under "manufactures of wool," and seem to rebut the

claim of the counsel for the Government that Congress intended to give to the word "wool" a different signification from that which it had previously borne.

75 The opinion of the Supreme Court of the United States in Bate Ref. Co. v. Sulzberger et al. states the guiding principles of construction and interpretation in such a case.

The court there holds that when the language of an act is explicit there is great danger in departing from the words actually used in order to give effect to the supposed intention of the legislature, and that in such circumstances the court should not so construe the statute as to embrace cases, because no good reason can be assigned why they were not included within its provisions.

76 26 The court further emphasizes the rule that it is not for the court to add to or substract from the express provisions of the law, but only to interpret the law as it rests, leaving to Congress to make provision for cases where such enactment may operate unjustly.

In view of the failure of Congress to make any distinction between the various classes of articles in said schedule, other than by the use of a word in the title, which by the settled definition of courts and legislature excluded the articles in question, and in the absence of any positive evidence of intention to include said articles within the provisions of said paragraph, I think it would be a violation of the
77 principles of construction and interpretation to extend the language of said paragraph so as to include "worsted dress goods."

The decision of the Board of General Appraisers is reversed.

(Endorsed:) U. S. circuit court, southern district of New York. No. 2107. Alex. Murphy et al. vs. The United States. Opinion. Townsend, J. U. S. circuit court. Filed Jun. 10, 1895. John A.
78 Shields, clerk.

79 27 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms, in the post-office building in the city of New York on the 24th day of June, in the year of our Lord one thousand eight hundred and ninety-five.

Present, the Hon. William K. Townsend, judge.

80 In the matter of the application of Alexander Murphy & Co. for a review of the decision of the General Appraisers as to the rates, &c., of duties on certain merchandise imported by them per S. S. "Waesland," August 30, 1894. No. 2107.

The above cause coming on for hearing and determination before this court on the application of the above-named importers, for a
81 review of the questions of law and fact involved in the decisions of the Board of U. S. General Appraisers herein, and on the return of the Board of General Appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decisions thereon. And on the additional evidence taken before General Appraiser Sharpe.

Now, after hearing W. Wickham Smith, of counsel for importers, appellants, for reversal, and Jas. T. Van Rensselaer, assistant U. S. attorney, on behalf of the collector, for affirmance:

28 On motion of Curie, Smith & Mackie, attorneys for importers, appellants, it is 82

Ordered, adjudged, and decreed that there was error in said proceedings before said Board of General Appraisers, and that their decisions herein be and the same are hereby in all things reversed; and that said merchandise was properly dutiable at 50% ad valorem, under paragraph 283, Schedule K, tariff act of August, 1894.

WM. K. TOWNSEND,
U. S. Judge.

Form assented to.

WALLACE MACFARLANE, 83
U. S. Attorney.

(Endorsed:) No. 2107. United States circuit court, southern district of New York. In the matter of the application of Alexander Murphy & Co., for a review of the decision of the General Appraisers as to the rates, &c., of duties on certain merchandise imported by them per "Waesland," Aug. 30, 1894. Judgment of reversal. Curie, Smith & Mackie, atty's for importers, 46 Exchange Place, N. Y. City. U. S. circuit court. Filed Jun. 25, 1895. John A. Shields, clerk. 84

29 United States circuit court of appeals for the second circuit. 85

UNITED STATES OF AMERICA, APPELLANT,
vs.
JOHN F. KLUMPP, JOSEPH B. BARTLEMAN, and John E. Heywood, composing the copartnership of Alexander Murphy & Company, appellees. } "A," 2107. 86

Assignment of errors.

The United States of America, appellant, hereby assigns error to the decision and judgment of the circuit court of the United States for the southern district of New York herein, in the following particulars:

First. In that it ordered, adjudged, and decreed that the decision of the Board of U. S. General Appraisers herein should be reversed, and that the merchandise involved should be dutiable at fifty per cent 87 ad valorem, under Schedule K, paragraph 283, of the tariff act of August 28th, 1894.

Second. In that, having found that "It is admitted that these goods are made from the fleece of the sheep, and are in that sense a product of wool, the court did not find and decide as matter of fact that the merchandise was worsted dress goods and was woolen cloths within the common meaning of those words.

Third. In that it did not decide as matter of fact that the goods were manufactures of wool within the common signification of those words.

88 30 Fourth. In that it did not decide as matter of law that the term "manufactures of wool" used in the title to Schedule K, and in paragraph 297 of the tariff act of August 28th, 1894, was used in the common and ordinary meaning of those words, and not in any commercial, technical, or restricted sense, as applying only to a limited class of manufactures from the fleece of the sheep.

Fifth. In that it did not decide as matter of law that the Congress of the United States, by successive acts of legislation and particularly in the tariff act of August 28th, 1894, October 1st, 1890, and by the act of May 9th, 1890, Chap. 200, entitled "An act pro-
89 viding for the classification of worsted cloths as woolens," has given a legislative construction to the meaning of the term "manufactures of wool," for the purposes of tariff duties, sufficiently broad to include the worsted dress goods in question; and that the said act of May 9th, 1890, was unrepealed.

Sixth. In that it did not decide as matter of law that paragraph 297 of Schedule K of the tariff act of August 28, 1894, postponed the taking effect of the duties provided for in that act as to merchandise of the character of the worsted dress goods in question until January 1st, 1895, and that the goods included in the present impor-
90 tation were properly dutiable under the appropriate provisions of the tariff act of October 1, 1890, as decided by the collector of customs at the port of New York and the Board of U. S. General Appraisers.

Seventh. In that it did not in all things affirm the decision of the said Board of U. S. General Appraisers herein.

Dated New York, June 26th, 1895.

WALLACE MACFARLANE,
United States Attorney in behalf of the United States of America, Appellant, Room 50, Post-Office Building, New York City, N. Y.

91 31 (Endorsed:) "A," Suit No. 2207. U. S. circuit court of appeals for the second circuit. The United States of America, appellant, vs. Alexander Murphy & Co., appellees. Assignment of errors. Wallace Macfarlane, United States attorney, attorney for appellant. U. S. circuit court. Filed Jun. 27, 1895. John A. Shields, clerk.

United States circuit court, southern district of New York.

92 THE UNITED STATES OF AMERICA, appellant, *vs.* JOHN F. KLUMPP, JOSEPH B. BARTLEMAN, and JOHN E. HEYWOOD, composing the copartnership of Alexander Murphy & Company, appellees.	"A," Suit No. 2107.

Please take notice that the undersigned, on behalf of the collector of the port of New York and on the part of the United States,

hereby appeals from the decision of this court, rendered herein and 93
entered on the 25th day of June, 1895, to the United States circuit court of appeals for the second circuit.

Dated, New York, June 27th, 1895.

Yours, &c.,

WALLACE MACFARLANE,
U. S. Attorney for the Southern District of N. Y.,
Room 50, Post Office Building, New York City.

To JOHN A. SHIELDS, *Clerk*, and
CURIE, SMITH & MACKIE, Esqs.,
Attorneys for Importers.

32 (Endorsed:) "A," Suit No. 2107. U. S. circuit court, 94
southern district of New York. The United States of America, appellant, vs. John F. Klumpp et al., composing the copartnership of Alexander Murphy & Company, appellees. Notice of appeal. Wallace Macfarlane, U. S. attorney. Due service of a copy of the within notice of appeal is hereby admitted. Dated, New York, June 27th, 1895. Curie, Smith & Mackie, E. W., attorneys for appellees. To Curie, Smith & Mackie, esqs., attorneys for appellees. U. S. circuit court. Filed Jun. 28, 1895. John A. Shields, clerk.

United States circuit court of appeals for the second circuit. 95

THE UNITED STATES OF AMERICA, appellant, *vs.* JOHN F. KLUMPP, JOSEPH B. BARTLEMAN, and JOHN E. HEYWOOD, composing the copartnership of Alexander Murphy & Company, appellees.	"A," Suit No. 2107.

To the United States circuit court of appeals for the second circuit: 96

The Attorney-General of the United States hereby applies for the allowance of an appeal to the United States circuit court of appeals for the second circuit from the decision and judgment of the U. S. circuit court rendered herein and entered on the 25th day of June, 1895.

Dated, New York, June 27th, 1895.

JUDSON HARMON,
Attorney-General,
Per WALLACE MACFARLANE,
U. S. Attorney.

33 The foregoing application is granted and appeal allowed. 97
Dated, New York, June 27th, 1895.

E. HENRY LACOMBE,
Judge of the U. S. Circuit Court of Appeals for the Second Circuit.

(Endorsed:) "A," Suit No. 2107. U. S. circuit court of appeals for the second circuit. The United States of America, appellant,

vs. John F. Klumpp et al., composing the copartnership of Alexander Murphy & Company. Application for an allowance of
98 appeal. Wallace Macfarlane, U. S. attorney. To Curie, Smith & Mackie, esqs., attorneys for appellees. Due service of a copy of the within is hereby admitted. Dated, New York, June 27, 1895. Curie, Smith & Mackie, E. W., attorneys for appellees. U. S. circuit court. Filed Jun. 28, 1895. John A. Shields, clerk.

99

100 34 UNITED STATES OF AMERICA, *ss:*

To John F. Klumpp, Joseph B. Bartleman, and John E. Heywood, composing the copartnership of Alexander Murphy & Company, importers:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the second circuit, at the city of New York on the 24th day of July, 1895, pursuant to an appeal on the part of the United States filed in the clerk's office of the circuit court of the United States for the southern district of New
101 York in a certain suit or proceeding entitled "The United States of America, appellant, vs. John F. Klumpp, Joseph B. Bartleman, and John E. Heywood, composing the copartnership of Alexander Murphy & Company, appellees," to show cause, if any there be, why the decision of the U. S. circuit court in the said appeal mentioned should not be reversed, modified, or corrected, and speedy justice should not be done in that behalf.

Given under my hand at the city of New York in the southern district of New York on the 27th day of June, 1895.

E. HENRY LACOMBE,
102 *Judge of the U. S. Circuit Court of Appeals for the Second Circuit.*

WALLACE MACFARLANE,
U. S. Attorney, on behalf of the United States, Appellant.

103 35 (Endorsed:) "A," Suit No. 2107. U. S. circuit court of appeals for the second circuit. The United States of America, appellant, vs. John F. Klumpp et al., composing the copartnership of Alexander Murphy & Co., appellees. Citation. Wallace Macfarlane, U. S. attorney. To Curie, Smith & Mackie, esqs., attorneys for appellees. Due service of a copy of the within citation is hereby admitted. Dated, New York, June 27, 1895. Curie, Smith & Mackie, E. W., attorneys for appellees. U. S. circuit court. Filed Jun. 28, 1895. John A. Shields, clerk.

104 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to forty-one inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of The

United States, appellant, against Alexander Murphy & Company, appellees, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to 105
be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 22d day of July, in the year of our Lord one thousand eight hundred and ninety-five, and of the independence of the said United States the one hundred and twentieth.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

36 United States circuit court of appeals for the second circuit. No. 108. October term, 1895. Submitted March 11, 1896. Decided March 17, 1896. In error to the circuit court of the United States for the southern district of New York.

THE UNITED STATES, APPELLANT,
vs.
ALEXANDER MURPHY & CO., APPELLEES.

Before Judges Wallace, Lacombe, and Shipman.

This is an appeal from the decision of the circuit court, southern district of New York, reversing a decision of the Board of General Appraisers, which affirmed the collector of the port of New York in the classification for customs duties of certain merchandise imported by the appellees.

LACOMBE, Circuit Judge: The articles in question were entered from the steamship "Waesland" August 29–30, 1894. The Board of Appraisers found them to be women's and children's dress goods composed of worsted, and the correctness of that finding is conceded. The importers claim they were dutiable under the Wilson tariff, then in force, being the act of August 28, 1894. Paragraph 283 of that act provides as follows:

"283. On women's and children's dress goods, coat linings, Italian cloth, bunting, or goods of similar description or character, and
37 on all manufactures, composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, * * * valued at not over fifty cents per pound, forty per centum ad valorem; valued at more than fifty cents per pound, fifty per centum ad valorem."

The collector assessed them for duty under paragraph 395 of the McKinley tariff, being the act of October 1, 1890, which paragraph reads as follows:

"395. On women's and children's dress goods, coat linings, Italian cloth, bunting, and goods of similar description or character composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, and not specially provided for in this act, the duty shall be twelve cents per square yard, and in addition thereto fifty per centum ad valorem."

The collector claimed to find authority for classifying these worsted dress goods under the act of 1890, instead of under the act of 1894, in paragraph 297 of the latter act, which reads as follows:

"297. The reduction of the rates of duty herein provided for manufactures of wool shall take effect January first, 1895."

On behalf of the Government it is contended that the words "manufactures of wool" as used in that paragraph are to be given the broadest

construction and to be held to include "manufactures of worsted," although it is apparent from paragraph 283, above quoted, that the framers of that act evidently understood that "manufactures of wool," "manufactures of worsted," "manufactures of camel hair," and "manufactures of goat hair" were different articles. It is unnecessary to discuss this contention. We entirely concur in the opinion of the judge who heard the case in the circuit court, which opinion will be found reported (68 Fed. Rep., 908).

An additional argument is present here which does not seem to have been pressed upon the circuit court.

On May 9, 1890, while the tariff of 1883 was in force, Congress
38 passed what is known as the Dingley Act (Chap. 200, Laws 1890, 26 Stat. at Large, 105). It reads as follows:

"An act providing for the classification of worsted cloths as woolens."

"That the Secretary of the Treasury be, and he hereby is, authorized and directed to classify as woolen cloths all imports of worsted cloth, whether known under the name of worsted cloth or under the names of worsted or diagonals or otherwise."

Counsel for the Government contends that this act was intended to abrogate the old rule of construction based on commercial designation; that worsteds were thereafter not to be classified as woolens, and that therefore it was a permanent instruction to be followed by customs officers, until expressly repealed, irrespective of whatever changes might subsequently be made in rates of duty on woolen or on worsted cloth.

If the Dingley Act were given the construction approved by the circuit court in the southern district of New York in Ballins vs. U. S. (45 Fed. Rep., 170), there might be force in this contention. It was held in that case that this statute was purely administrative, regulating a special method of classification, to be carried out by official action of the Secretary of the Treasury, and with nothing on its face to indicate that it was intended to repeal or in any way alter any act imposing customs duties. If it were a mere administrative regulation, it might fairly be urged that it would remain in force until some other administrative statute prescribed some different method of classification. But the difficulty here is that this decision of the circuit court was reversed by the Supreme Court. U. S. v. Ballin (114 U. S., 1). That court held that it was a self-executing act providing for a rate of duty on worsted cloths. In other words, its effect was to amend the tariff of 1883 by inserting therein a provision for worsted cloths, laying upon such cloths the same rate of duty as that tariff prescribed for woolen cloths. Subsequently the McKinley Act of October 1, 1890, was passed. It contains
39 paragraphs covering the entire field of wool and worsted manufactures, including woolen cloths and worsted cloths, and of course superseded the earlier tariff act of 1883 and the Dingley Act, which, as construed by the Supreme Court, was simply an amendment of that act. In re Straus (46 F. R., 522); Kent vs. U. S. (68 Fed. Rep., 536).

The Dingley Act, therefore, is no longer in force.

The decision of the circuit court is affirmed.

Wallace Macfarlane, United States attorney, for the appellant; William Wickham Smith, for the appellee.

40 At a stated term of the U. S. circuit court of appeals for the second circuit, held at the U. S. post-office and court-house building in the city of New York, on the 7th day of April, 1896.

Present, The Hon. Wm. J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, judges.

THE UNITED STATES, APPELLANT,
vs.
JOHN F. KLUMPP, JOSEPH B. BARTLEMAN, AND John E. Heywood, composing the copartnership of Alexander Murphy & Co., appellees. } Suit A, ≠ 2107.

An appeal having been duly taken in this court from a judgment of the circuit court of the United States for the southern district of New York, entered June 24th, 1895, and said appeal coming on to be heard;

Now, after hearing Wallace Macfarlane, esq., U. S. attorney, of counsel for appellant, for reversal, and W. Wickham Smith, esq., of counsel for appellees, for affirmance, and due deliberation having been had;

On motion of Curie, Smith & Mackie, attorneys for appellees,

It is ordered, adjudged, and decreed that the judgment of the said circuit court of the United States for the southern district of New York be, and the same hereby is, in all things affirmed; and it is further ordered that mandate issue to the said circuit court, directing that court to make and enter a judgment herein reversing the decision of the Board of General Appraisers in this case.

W. J. W.
E. H. L.
N. S.

Consented to as to form.

WALLACE MACFARLANE,
U. S. Atty.

(Endorsed:) ≠2107. U. S. circuit court of appeals, second circuit. The United States, appellant, vs. John F. Klumpp, Joseph B. Bartleman, and John E. Heywood, composing the copartnership of Alexander Murphy & Co., appellees. Order for mandate. Curie, Smith & Mackie, attys. for importers, ≠46 Exchange Place, N. Y. City. United States circuit court of appeals, second circuit. Filed Apr. 7, 1896. James C. Reed, clerk.

41 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 40, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The United States, appellant, vs. John F. Klumpp, Joseph B. Bartleman, and John E. Heywood, composing the copartnership of Alexander Murphy & Co., appellees, Suit A, ≠2107, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of

New York, in the second circuit, this eighth day of April, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the said United States the one hundred and twentieth.

[SEAL.] JAMES C. REED, *Clerk.*

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, greeting:

Being informed that there is now pending before you a suit in which The United States is appellant and Alexander Murphy & Co. are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the
43 Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the seventh day of May, in the year of our Lord one thousand eight hundred and ninety-six.

[SEAL.] JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

44 (Indorsed:) Supreme Court of the United States. No. 974, October term, 1895. The United States vs. Alexander Murphy & Co. Writ of certiorari.

45 In the Supreme Court of the United States. October term, 1895.

THE UNITED STATES
vs. } No. 974.
ALEXANDER MURPHY & CO.

On a writ of certiorari to the circuit court of appeals for the second circuit.

STIPULATION.

It is hereby stipulated between counsel for the parties to the above-entitled cause that the certified copy of the record of the cause in the circuit court of appeals for the second circuit, now on file in the Supreme Court, may be treated as the return to the writ of certiorari herein.

HOLMES CONRAD,
Solicitor-General.

W. WICKHAM SMITH,
Counsel for Respondent.

A copy.

[SEAL.] JAMES C. REED, *Clerk.*

46 *To the Honorable the Supreme Court of the United States:*

The record and all the proceedings in the cause whereof mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a certified copy of the stipulation of counsel is hereto annexed, and under the direction of counsel for the appellant said stipulation is certified as a return to this writ.

New York, May 14, 1896.

[SEAL.] JAMES C. REED,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

47 (Indorsed:) Case No. 16264. Supreme Court U. S. October term, 1896. Term No., 498. The United States, appt., vs. Alexander Murphy & Co. Writ of certiorari and return. Office Supreme Court U. S. Filed May 18, 1896. James H. McKenney, clerk.

No. 974 & 975
Reply Brf. of Atty. Gen. for Appt
Filed Apr. 27, 1896.
APR 27 1896
JAMES H. MCKENNEY
CLERK
824

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES, APPELLANT,
v.
ALEXANDER MURPHY & CO. } No. 974.

REPLY BRIEF FOR APPELLANT ON APPLICATION FOR A WRIT OF CERTIORARI

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES, APPELLANT,
v.
ALEXANDER MURPHY & CO. } No. 974.

REPLY BRIEF FOR APPELLANT ON APPLICATION FOR A WRIT OF CERTIORARI.

The undersigned respectfully begs to call the court's attention to certain misstatements contained in the first point in the brief filed on behalf of the importers in opposition to their application for a writ of *certiorari* herein.

It is hardly necessary to notice the statement, which, as I am informed, is unfounded, that the amount involved in a tariff controversy is customarily, or ever, assigned to this court on behalf of the Government as a reason for deciding the controversy in its favor.

The importers' counsel, however, go further, and attempt to lead this court into the erroneous belief that the amount involved in the present controversy is no

greater than is ordinarily or frequently involved in such cases; the object evidently being to create a fear lest granting a hearing to the Government upon this application would be a precedent which would restore tariff litigation to this court to an embarrassing extent. This case is stated to be "an excellent application of the proposition" that "if the largeness of the amount involved is to be regarded as a ground" for writs of *certiorari*, "practically every revenue case will have to come here, as the amount involved is large in almost every instance;" that "if the courts of appeals cease to be final tribunals in revenue cases, as the statute has made them, all the aforesaid cases will have to come to this court."

It is the belief of the undersigned that this court should not be asked to grant writs of *certiorari* except in cases of great importance to the Government; that in other cases, no matter how erroneous may be the decisions of inferior tribunals, they should be considered as final.

Consequently, in the rare cases in which applications for writs of *certiorari* are made, the importance of the question, as well as the reasons for considering the decision below to be erroneous, should be set forth in the application.

Cases approaching the present in magnitude of the amount involved are very rare indeed. In many decisions of circuit courts of appeals amounts are indirectly involved which would be regarded as considerable by private litigants. Very rarely, however, do they approach even a fourth part of the amount involved in the present case.

In the three years and a half which have elapsed since this court decided that customs cases could no longer be brought here as of right, the Government has asked but six times for a writ of *certiorari*, as the undersigned is informed. These six applications are as follows:

October term, 1893, *United States* v. *Allen*. The application was granted, and the case is No. 337 on the present docket.

October term, 1893, *The Steam Yacht Conqueror* v. *Vanderbilt*. The application was granted, and the case is No. 367 on the present calendar.

October term, 1894, *Saltonstall* v. *Birtwell*. The application was granted, and the case is being now for the second time argued.

October term, 1894, *United States* v. *Merck*. This case involved the question, What is a manufactured as distinguished from an unmanufactured article? a question continually recurring in the Treasury Department in various ways, and upon which this Department desired further judicial light.

October term, 1895, *United States* v. *Harden*. This case involved an unusually large amount pecuniarily, although the amount was small in comparison with the case now presented. It also involved principles of statutory interpretation, in which the assistance of this court was desired.

The present is the sixth application. The court is respectfully urged to consider it upon its merits for two reasons: First, that the amount involved is large enough to make the case one of exceptional importance to the

Government; and second, because the ground of the decision below, while plausible, is extremely technical, and, as the undersigned believes, absolutely inconsistent with all true principles of statutory construction.

Respectfully submitted.

JUDSON HARMON,
Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE UNITED STATES, APPELLANT,
v.
ALEXANDER MURPHY & CO. } No. 159.

BRIEF FOR THE UNITED STATES.

STATEMENT.

On August 30, 1894, Alexander Murphy & Co. imported into New York certain merchandise, consisting of worsted dress goods. The collector classified this merchandise and assessed it for duty under paragraph 395 of the act of October 1, 1890 (26 Stats., 567), at 12 cents per square yard and 50 per cent ad valorem. Against this action of the collector the importers protested, claiming the goods dutiable under paragraph 283 of the tariff act of August 27, 1894 (28 Stats., 509), at 40 per cent or 50 per cent ad valorem, according to the value per pound. The Board of General Appraisers overruled the protest. (Opinion, Sharretts, G. A., Record, p. 6.) The importers

carried the matter to the circuit court, which reversed the decision of the Board of General Appraisers. (Opinion, Townsend, D. J., Record, p. 12.) On an appeal to the circuit court of appeals the decision of the circuit court was affirmed. (Opinion, Lacombe, C. J., Record, p. 19.) The case is brought here by writ of certiorari.

The character of the imported goods and the action of the collector in classifying them, are defined in a stipulation of counsel, printed in the record, page 11, as follows:

> It is admitted by counsel for both parties hereto that the classification of the merchandise by the collector was worsted dress goods, at 12 cents per square yard and 50 per cent ad valorem, under schedule K, paragraph 395, of the tariff act of October 1, 1890.
>
> It is further conceded and stipulated by counsel for the respective parties hereto that the merchandise in controversy is worsted dress goods made from the fleece of the sheep, which has been combed and spun into worsted yarn, and is not composed of the hair of the camel, goat, alpaca, or other animal than sheep.

Paragraph 395, of Schedule K.—"Wool and manufactures of wool," of the act of October 1, 1890, reads:

> 395. On women's and children's dress goods, coat linings, Italian cloth, bunting, and goods of similar description or character, composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, and not specially provided for in this act, the duty shall be twelve cents per square yard, and in addition thereto fifty per centum ad

valorem: *Provided*, That on all such goods weighing over four ounces per square yard, the duty per pound shall be four times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto fifty per centum ad valorem.

Paragraph 283 of Schedule K.—"Wool and manufactures of wool," of the act of August 27, 1894, provides:

283. On women's and children's dress goods, coat linings, Italian cloth, bunting, or goods of similar description or character, and on all manufactures, composed wholly or in part of wool, worsteds, the hair of the camel, goat, alpaca, or other animals, including such as have india rubber as a component material, and not specially provided for in this act, valued at not over fifty cents per pound, forty per centum ad valorem; valued at more than fifty cents per pound, fifty per centum ad valorem.

Paragraphs 280 to 286, inclusive, under "Schedule K.—Wool and manufactures of wool," of the act of 1894, provide for duties on articles manufactured out of the wool of the sheep, or the hair of the camel, goat, alpaca, or other like animals. The concluding paragraph in this schedule reads:

297. The reduction of the rates of duty herein provided for manufactures of wool shall take effect January first, eighteen hundred and ninety-five.

The question is, whether worsted dress goods, made from the fleece of the sheep, are manufactures of wool within the meaning of this paragraph. If they are, the collector was right; if not, he was wrong.

ARGUMENT.

I.

Worsted goods are made of wool and are manufactures of wool.

The distinction between worsted and woolen goods, when it existed in our tariff laws, rested not upon the material but the process of manufacture. Both goods were manufactured articles, and both were manufactured of wool, but in manufacturing them different processes were used. Worsted is a term used to denote the manner in which wool has been manufactured. The distinction between woolen and worsted does not arise until some article has been manufactured of wool. Then, if it has been manufactured in one way, it is a woolen article; if manufactured in another way, it is a worsted article, but both are manufactures of wool.

> Worsted is made by combing the long-fibered wools so that the fibers shall lie or be arranged alongside of each other, while wool is worked by carding so as to interlock the fibers with each other. (Judge Blatchford, in *Cahn* v. *Seeberger*, 30 Fed. Rep., 425, 426, quoted by Mr. Justice Gray in the statement of *Seeberger* v. *Cahn*, 137 U. S., 95, 96.)

In the early part of this century the carding and combing of wool, which resulted in woolen and worsted yarns respectively, were done by hand. Only the longer and coarser wool could thus be combed and made into worsted yarn, while the shorter and finer wool was made into woolen yarn. These fabrics required a number of additional finishing processes, increasing the labor and cost involved, which were not required for the worsted fabrics.

The latter were necessarily coarser and of an inferior quality, and were usually called "stuffs." Gradually, through the introduction of machinery and improved processes of manufacture, it became possible to comb shorter and finer varieties of wool, and thus to manufacture worsted goods of higher grade and better quality. In the sixties the sharp distinction between woolen and worsteds began to disappear, and in the eighties the two processes of manufacturing woolen and worsted goods had overlapped one another. The overlapping process, the approximation of worsted to woolen goods, the equalization of the cost of manufacture, and the similarity of the uses to which the products were put, resulted, not only in making the classification of woolens and worsteds for customs purposes difficult, but in removing the reason for any distinction between them in the matter of duties levied.

The result was, that by the so-called Dingley act of May 9, 1890 (26 Stat., 105), Congress designedly wiped out the distinction for tariff purposes between worsteds and woolens, directing the Secretary of the Treasury "to classify as woolen cloths all imports of worsted cloths, whether known under the name of worsted cloth or under the names of worsted, or diagonals, or otherwise."

Since May 9, 1890, the same duties have been levied upon woolens and worsteds. The so-called McKinley act of October 1, 1890, and the so-called Wilson act of August 27, 1894, while mentioning worsteds along with woolens, levy precisely the same duties on each. The so-called Dingley act of July 24, 1897 (Stat. 1897, p. 151), omits the word "worsted" in the various paragraphs of

the woolen schedule, and in paragraph 383, at the close of the schedule, defines the word "wool" as used in the act "to include wool or hair of the sheep, camel, goat, alpaca, or other animals, whether manufactured by the woolen, worsted, felt, or any other process."

For convenience of reference there is printed as an appendix to this brief some extracts from encyclopædias, describing the progress in the manufacture of wool into woolens and worsteds.

II.

The tariff legislation shows that while worsteds up to 1890 were subjected to special rates of duty, they were recognized as manufactures of wool.

I content myself with printing extracts from the tariff acts, beginning with that of 1816, and adding comments.

Act of April 27, 1816 (3 Stat., 310):

> A duty of twenty-five per centum ad valorem *on woolen manufactures* of all descriptions, of which wool is the material of chief value, *excepting* blankets, woolen rugs, and *worsted or stuff goods*, shall be levied, etc.

This recognizes worsted or stuff goods as a woolen manufacture.

Act of May 22, 1824 (4 Stat., 25):

> *On all manufactures of wool*, or of which wool shall be a component part, *except worsted stuff goods* and blankets, which shall pay twenty-five per centum ad valorem, a duty of thirty per centum ad valorem, etc.

Here again worsted stuff goods are recognized as manufactures of wool.

Act of May 19, 1828 (4 Stat., 270):

> *On manufactures of wool*, or of which wool shall be a component part (*except* carpetings, blankets, *worsted stuff goods*, bombazines, hosiery, mitts, gloves, caps, and bindings), etc.

Another recognition that worsted stuff goods is a manufacture of wool.

Act of July 14, 1832 (4 Stat., 583):

> On all milled and fulled cloth, known by the name of plains, kerseys, or kendal cottons, of which wool shall be the only material, the value whereof shall not exceed thirty-five cents a square yard, five per centum ad valorem; *on worsted stuff goods*, shawls, and other manufactures of silk and worsted, ten per centum ad valorem; * * * and *upon all other manufactures of wool* or of which wool is a component part, and on ready-made clothing, fifty per centum ad valorem.

It may be inferred from this language that worsted stuff goods are a manufacture of wool.

Act of August 30, 1842 (5 Stat., 548):

> *On all manufactures of wool*, or of which wool shall be a component part, except carpetings, flannels, bockings and baizes, blankets, *worsted stuff goods*, ready-made clothing, etc.

Another recognition of worsted stuff goods as a manufacture of wool.

Act of July 30, 1846 (9 Stat., 42).

Under Schedule C, which levies a duty of 30 per centum ad valorem, is included—

> Manufactures of cotton, linen, silk, wool, or worsted, if embroidered, etc.

On manufactures of wool, or of which wool shall be the component material of chief value, *not otherwise provided for*.

Under Schedule D, a duty of 25 per centum ad valorem is levied upon—

Manufactures of worsted, or of which worsted shall be a component material, *not otherwise provided for*.

Here is a separation of the manufactures of wool, not otherwise provided for, from manufactures of worsted, not otherwise provided for, a definite duty on each being levied.

Act of March 3, 1857 (11 Stat., 192).

This act, by reference to the tariff act of 1846, made reductions in the duties upon articles enumerated in the several schedules.

Act of March 2, 1861 (12 Stat., 252):

On woolen cloths, woolen shawls, and *all manufactures of wool* of every description, not otherwise provided for, a duty of twelve cents per pound, and in addition thereto twenty-five per centum ad valorem.

On all delaines * * *; on bunting * * *; and *on all other manufactures of worsted*, or of which worsted shall be a component material, not otherwise provided for, thirty per centum ad valorem.

Here, again, is a separation of manufactures of wool, not otherwise provided for, from manufactures of worsted, not otherwise provided for.

Act of July 14, 1862 (12 Stat., 543):

On woolen cloths, woolen shawls, and *all manufactures of wool*, of every description, made wholly

or in part of wool, *not otherwise provided for*, a duty of six cents per pound, and in addition thereto five per centum ad valorem.

On bunting, worsted yarns, and *on all other manufactures of worsteds*, or of which worsted shall be a component material, *not otherwise provided for*, five per centum ad valorem.

Act of June 30, 1864 (13 Stat., 202):

On woolen cloths, woolen shawls, and *all manufactures of wool* of every description, made wholly or in part of wool, *not otherwise provided for*, twenty-four cents per pound, and in addition thereto forty per centum ad valorem.

On bunting, and on *all manufactures of worsted*, mohair, alpaca, or goats' hair, or of which worsted, mohair, alpaca, or goats' hair shall be a component material, *not otherwise provided for*, fifty per centum ad valorem.

Act of March 2, 1867 (14 Stat., 542).

This act divides all unmanufactured wools and the hair of the alpaca, goat, and other like animals imported, into three classes—clothing wools, combing wools, and carpet wools.

On woolen cloths, woolen shawls, and *all manufactures of wool*, * * * not otherwise provided for, fifty cents per pound, and in addition thereto thirty-five per centum ad valorem.

On flannels, blankets, hats of wool, knit goods, balmorals, woolen and worsted yarns, and *all manufactures of every description composed wholly or in part of worsted*, the hair of the alpaca, goat, or other like animals, * * * not otherwise provided for, so much per pound according to value, and in addition thereto thirty-five per centum ad valorem.

Distinct duties are levied on women's and children's dress goods, etc., composed wholly or in part of wool, worsted, the hair of the alpaca, goat, or other like animals; and also on clothing ready-made, wearing apparel of every description, and balmoral skirts and skirting, etc., composed wholly or in part of wool, worsted, hair of the alpaca, goat, and other like animals, etc.

The provisions of this act, levying certain duties upon articles specially described, whether manufactured of wool, worsted, or the hair of the animals named, are similar to the provisions in the tariff acts following:

Act of June 6, 1872 (17 Stat., 230).

In the second section of this act it is provided that after August 1, 1872, 90 per centum of the rates of duty then imposed should be levied—

> On all wools, hair of the alpaca, goat, and other like animals, and all manufactures, wholly or in part, of wool, or hair of the alpaca and other like animals, except as hereinafter provided.

Here is language akin to that used in the Wilson bill; language not of commercial designation, but of description. The phrase "manufactures of wool" would cover manufactures of worsted.

Act of March 3, 1883 (22 Stat., 488).

Among the schedules of this act is "Schedule K—Wool and woolens." The act divides "all wools, hair of the alpaca, goat, and other like animals," into three classes—clothing wools, combing wools, and carpet wools, and levies a duty upon each.

> Woolen cloths, woolen shawls, and *all manufactures of wool of every description*, made wholly or in

part of wool, not specially enumerated or provided for in this act, so much per pound according to value, and in addition thereto forty per centum ad valorem.

Flannels, blankets, hats of wool, knit goods, and all goods made on knitting frames, balmoral, woolen and worsted yarns, and *all manufactures* of every description, *composed wholly or in part of worsted*, * * * not specially enumerated or provided for in this act, so much per pound according to value, and in addition thirty-five per centum ad valorem.

This act, like the McKinley bill, the Wilson bill, and the Dingley bill, provides a distinct duty on "women's and children's dress goods, coat linings, Italian cloths, and goods of like description, composed wholly or in part of wool, worsted, the hair of the alpaca, goat, or other animal;" also a duty on "clothing, ready-made, and wearing apparel of every description, * * * composed wholly or in part of wool, worsted, etc.;" also a duty on "cloaks, dolmans, jackets, etc., composed wholly or in part of wool, worsted, etc."

The provisions of the subsequent tariff laws, the McKinley bill, Wilson bill, and Dingley bill, are discussed elsewhere.

It will be observed that the acts of 1816, 1824, 1828, 1832, and 1842 recognize "worsted stuff goods" as a manufacture of wool, while levying a separate duty on them. The act of 1846 and the succeeding acts, up to and including that of 1883, separate "manufactures of wool not otherwise provided for" from "manufactures of worsteds not otherwise provided for," levying distinct duties on each, while, from the sixties on, distinct duties

are levied on articles specially described, whether manufactured of wool or worsted.

III.

Since the passage of the Dingley act of May 9, 1890, there has been no difference between woolens and worsteds for customs purposes, the same duties being levied upon each.

The Dingley Act of May 9, 1890, grew out of the decision in *Seeberger* v. *Cahn* (137 U. S., 95), in which this court held that cloths popularly known as diagonals and known in trade as worsteds, were subject to duty as a manufacture of worsted and not as a manufacture of wool, under the act of March 3, 1883. This court in that case, speaking by Mr. Justice Gray, called attention to the fact that, of the two successive paragraphs in the customs act of 1883, upon which the parties relied, the first imposed a certain scale of duties on "all manufactures of wool of every description, made wholly or in part of wool, not specially enumerated or provided for in the act," while the second imposed a lower scale of duties on "all manufactures of every description, composed wholly or in part of worsted," and then said (bottom p. 97):

> *Though worsted is doubtless a product of wool, and might in some aspects be considered a manufacture of wool*, yet manufactures of worsted being subjected by the second paragraph to different duties from those imposed by the first paragraph on manufactures of wool, it necessarily follows that a manufacture of worsted can not be considered as a manufacture of wool within the meaning of this statute.

Following this decision came the direction from Congress, in the act of May 9, 1890, to the Secretary of the Treasury, to classify as woolen cloths all imports of worsted cloth, whether known under the name of worsted cloth, or under the names of worsted, diagonals, or otherwise. This act came before this court in *United States* v. *Ballin* (144 U. S., 1), and its nature and effect were thus described by Mr. Justice Brewer, speaking for the court (bottom p. 10):

> The form of expression used in the act may be novel, but the intention of Congress is quite clear. Recognizing the fact that the Secretary of the Treasury is the head of the financial department of the Government, that to him, as its chief administrative official, is given the supervision of the tariff and all collections thereunder, it directs him to classify all worsted cloths as woolen cloths, and it gives him no discretion. He may not classify some worsteds as woolens and others as not. There is given no choice or selection, but it is the imperative direction of Congress to him, as the chief administrative officer in the collection of duties, to place all worsted cloths, by whatever name properly known, or known to the trade, within the category of woolen cloths, and, of course, if placed within that category, or, using the familiar language of the tariff, if "classified as woolen cloths," subject to the duty imposed upon such cloths. If action were necessary by the Secretary of the Treasury to put this act into force, which was not, as we think, such action was taken by the circular letter of May 13, 1890, from the Treasury Department to all customs officers, publishing the act for the information and guidance of the public.

In the act of October 1, 1890, under "Schedule K—Wool and manufactures of wool"—while the word "worsted" is used along with the word "wool," the same duties are levied upon woolen and worsted goods.

Paragraphs 375 to 387, inclusive, provide for the division of all wools, hair of the camel, goat, alpaca, and other like animals into three classes, and the levying of certain duties upon each class. Paragraphs 391 to 398, inclusive, provide for certain duties upon described articles, whether made wholly or in part "of wool, worsted, the hair of the camel, goat, alpaca, or other animals." *There is nowhere in this act a distinction in point of duty between an article made of wool and one made of worsted.* The word "worsted" seems to be used not as a word of distinction, but as a word of inclusion, from abundance of caution, in order to cover the entire ground. Really, worsted is included within wool, not being a distinct material, but a manufacture of wool made by combing long-fibered wools so that the fibers shall lie or be arranged alongside each other.

In the act of August 27, 1894, the same method of treatment is used, except that wool is put on the free list by paragraph 685, and the paragraphs of the McKinley Act classifying the wool and levying duties upon the different classes are omitted. Paragraphs 280 to 286, inclusive, of Schedule K, "Wools and manufactures of wool," of the Wilson law, impose certain duties upon certain described articles, whether composed wholly or in part of wool, worsteds, the hair of the camel, goat, alpaca, or other animals. You will search in vain in this

act for any distinction between manufactures of wool and manufactures of worsted for purposes of duty.

The act of July 24, 1897, does what should have been done before under the wool schedule—omits the needless repetition of "wool, worsted, hair of the camel, goat, alpaca, and other animals," and uses the single word "wool," defining this word in paragraph 383 "to include wool or hair of the sheep, camel, goat, alpaca, or other animal, whether manufactured by the woolen, worsted, felt, or any other process."

What the law has not recognized since May 9, 1890, this court in this case is requested to create—a distinction between manufactures of wool and manufactures of worsteds for customs purposes, and to levy a different duty upon worsteds from that levied upon woolens.

IV.

The situation existing at the time the Wilson bill was under consideration led Congress to postpone the reduction of duties on manufactures of wool in order to induce the great jobbers, in the spring of 1894, to place their orders for the fall trade with the American manufacturers, and, in turn, induce the latter to buy the spring clip of the American farmers. The American manufacturer was guaranteed protection in the fall market to induce him to buy the spring clip of the American farmer. The protection thus guaranteed applied to both worsteds and woolens—to all goods manufactured out of raw wool.

A reference to the proceedings of Congress may properly be made to inform the court of the exigencies of the woolen interests, both wool raisers and manufacturers of

wool, and the reasons for postponing the reduction in the duty on goods manufactured of wool. *American Net and Twine Company* v. *Worthington*, 141 U. S. 468, 474, and cases cited.

> Another guide to the meaning of a statute is found in the evil which it is designed to remedy, and for this the court properly looks at contemporaneous events, the situation as it existed, and as it was pressed upon the attention of the legislative body. *Holy Trinity Church* v. *The United States*, 143 U. S. 457, 463.

The act of 1890, under the title "Schedule K—Wool and manufactures of wool," laid duties on wool and on articles manufactured of wool, whether by the combing or carding process, whether worsteds or woolens. The act of 1894, under the same heading, struck off the duties on wool and reduced the duties on articles manufactured of wool. It immediately became a question before Congress as to the effect of this reduction upon the woolgrowing and wool-manufacturing industries of this country. The raw material, wool of the sheep, put on the free list, was used indifferently in the manufacture of articles, both by the woolen and worsted processes. The manufacturers of woolen goods in this country made both worsteds and woolens.

In order to advise Congress on the subject under consideration, by joint resolution (House, February 28, 1893; Senate, March 3, 1893) it was ordered that there be printed a new edition of a special report of the Chief of the Bureau of Statistics relating to wool and the manufacture of wool, to be brought down to date. In compliance with this, there was submitted to Congress a

"Report upon the production, commerce, and consumption of wools and manufactures of wools in the leading nations of the world." This publication included data as to both woolens and worsteds, and in particular the tables of Helmuth, Swartz & Co., in which woolens and worsted are tabulated together. These tables were frequently referred to in the debate.

The Senate Committee on Finance sent out a circular of inquiry, dated December 20, 1893, requesting information with respect to the woolen industry. The replies are printed in Report No. 511, Fifty-third Congress, second session, ordered printed on July 10, 1894. The information contained in these reports was before Congress at the time of the consideration and passage of the act of August 27, 1894. As a sample reply, I refer the court to No. 6048, Report, page 53, from the Botany Woolen Mills, of Passaic, N. J., *manufacturers of woolen and worsted dress goods*, etc., in which the following suggestions appear:

> In our line the sudden change from high protection on wool to free wool is the only cause for the present depression in trade, and if such a remarkable depression is wished to be minimized, then only a gradual lowering of duties annually on raw material can accomplish the tendency without doing the enormous damage that such a sudden change is bound to do. * * *
>
> If changes are wanted toward decreased duties, we would recommend that the duty for wool be lowered from 11 to 8 cents for the first year, from 8 to 5 cents for the second year, etc., with compensatory duties in said respective periods in a like pro-

portion to the schedule of the existing law, *but with the provision that the duty on manufactures of wool so decreased go into effect six months after the respective lowered duty on raw wool would go into effect.*

Not with a view of presenting the reasons why a particular Member of Congress voted for a bill, nor his conclusions as to the proper construction of the language used, but in order to place before the court the situation as it then existed and was presented to Congress, I quote the language of Mr. Wilson, used January 17, 1894 (Congressional Record, vol. 26, part 1, p. 946):

> Now, Mr. Chairman, I simply want to call the attention of the committee to the amendment upon which we are about to vote. The amendment which I have offered on behalf of my fellow-members of the Democratic side of the Ways and Means Committee is to fix the date when the proviso for free wool shall go into effect as the 1st of August, *to be followed up with an amendment fixing the day at which the reduction contained in the woolen schedule shall take effect as the 1st of December.* We were just as reluctant to present this when it was introduced yesterday as the most impetuous members on this side to whom its first presentation seems to be an unwelcome proposition, but the whole question is summed up in a few words.
>
> *The great jobbers of the country, Marshall Field, Arnold & Constable, and the other great purchasers of woolen goods, are hesitating now, this very day, whether to give their orders for the fall trade to foreign manufacturers or to American manufacturers, and unless we fix these dates definitely they will probably give the great bulk to foreign manufacturers, taking the chances of bringing them in under the reduced tariff*

rates. With the dates fixed at the days we propose they will put their orders to a very large extent with the home manufacturers. Our own mills can do the usual work through the winter months, and our own farmers can find a market, the only market they have, for the sale of their spring clip of wool. It is for that reason, Mr. Chairman, that we have presented these two dates and ask the committee now to vote upon them.

Thus it appears that what was before Congress was the fact that if, in January, 1894, it was made known that the reduction of the duties on articles manufactured of wool would be postponed for four months after the act, with its provisions for free wool, went into effect in August, the woolgrowers would find a market for their spring clip at the woolen mills in this country, and these mills would keep running on orders from the great jobbers of the country, who had to buy from them, because the reduced duties on woolen goods would not go into effect until the 1st of December (afterwards changed to the 1st of January). The policy of the postponement of the reduction in the duties on woolen goods applied to all goods of which wool was the raw material. The mode of manufacturing the wool into the finished fabrics, whether by worsted or other process, cut no figure.

It is true there was a further provision in paragraph 297, as it passed the House, for additional reductions in all rates of duty in the woolen schedule. This provision was stricken out in the Senate, which was opposed to further and additional reductions of duties, and which, indeed, amended the Wilson bill, as it passed the House,

so as to make it to a considerable extent a protective-tariff measure. The additional reduction thus stricken out applied to all rates in the woolen schedule. The postponement of the reduction of duties applied only to goods manufactured of wool. Congress had in mind the woolgrowers of this country and the woolen mills.

V.

The rule stated in Arthur v. Rheims (96 U. S., 143) does not apply, but the principle laid down in Barber v. Schell (107 U. S., 617) does. Worsted dress goods are not made dutiable, by paragraph 283, eo nomine, or by commercial designation, or by rates distinct from those imposed on woolen dress goods, so that nothing stands in the way of applying to them the provisions for a postponement of the reduction in duties, in paragraph 289, the general words "manufactures of wool" therein being directed to the raw material out of which the goods are made, and including all products of wool, by whatever process manufactured.

With the passage of the so-called Dingley bill of May 9, 1890, the distinction between worsteds and woolens, for duties purposes, ceased to exist in the customs laws of this country. The same Congress which passed this bill, enacted the tariff act of October 1, 1890, levying precisely the same rates of duties on worsteds as on woolens. From this time duties under the woolen schedule were levied on manufactures of wool, according to their description, without reference to whether made by the combing or carding, by the worsted or other process. The word "worsted" was retained in the acts of 1890 and 1894, but it was no longer used in contrast to "wool,"

but in conjunction with it; it ceased to be used as a word of distinction, and became one of inclusion, of comprehensive description.

Following a principle common among parliamentary draftsmen, the broader term "wool" was followed by the narrower term "worsted," really included within it, just as in the Constitution Congress is given power "to lay and collect taxes, duties, imposts, and excises." "Taxes" includes "duties, imposts, and excises," but the latter words follow because deemed conducive to greater certainty, more comprehensive expression. (Cooley's Constitutional Limitations, 55.) The act of 1890 divides "all wools, hair of the camel, goat, alpaca, and other like animals," into three classes, and levies a duty on each class. Wool of the sheep, and hair of the camel, goat, alpaca, and other like animals, cover and include the raw material out of which the articles made dutiable by paragraphs 391 to 398, inclusive, are manufactured. The duties on the manufactured articles are compound—a specific duty per pound based on the duty imposed by the act on a pound of unwashed wool of the first class, and in addition an ad valorem duty of a certain per centum.

Paragraph 392 imposes "on woolen or worsted cloths, shawls, knit fabrics, and all fabrics made on knitting machines or frames, and all manufactures of every description made wholly or in part of wool, worsteds, the hair of the camel, sheep, goat, alpaca, or other animals, not specially provided for in this act, valued at not more than thirty cents per pound," a duty per pound of

"*three times the duty imposed by this act on a pound of unwashed wool* of the first class, and in addition thereto forty per centum ad valorem."

In the case of "women's and children's dress goods," etc., composed wholly or in part of wool, worsted, etc. (paragraph 395), in place of the duty per pound, a specific duty of 12 cents per square yard is levied, in addition to the ad valorem duty, with the proviso that, "on all such goods weighing over four ounces per square yard the duty per pound shall be *four times the duty imposed by this act on a pound of unwashed wool* of the first class, and in addition thereto fifty per centum ad valorem.

In short, additional protection is accorded articles manufactured of wool because of the duty laid on wool, and this protection takes the form, in the act of 1890, of a specific duty, based in certain cases upon the weight of the fabric, computed according to the duty imposed by the act on a pound of unwashed wool of the first class.

The act of 1894 put wool on the free list, and struck out the specific duty per pound or yard. Take paragraph 283, providing for the duty "on women's and children's dress goods," etc. (being the paragraph involved in this case); the same ad valorem duty is levied, but the specific duty is omitted. In other words, wool being put on the free list, the compensatory duty on manufactures was no longer needed.

The Wilson bill was under consideration from the time Congress met in December, 1893. In January, 1894, Mr. Wilson announced, as the policy of those who had the bill in charge, a postponement of the reduction of the duty

on manufactures of wool for about four months after the bill went into effect. This was for the purpose of furnishing a market to the farmers for the spring clip of 1894, and to guarantee the manufacturers protection in the fall market of 1894 for goods manufactured out of dutiable wool. The considerations operating upon Congress applied to all products of wool, by whatever process manufactured. The controlling consideration was the fact that the raw material—wool of the sheep—was to be put on the free list. To protect those interested in the raw material—the farmer in raising it, the manufacturer in buying it—the reduction of the duties on the manufactured article was postponed for four months.

This is not a case to be decided on purely technical grounds. The language involved is not language of commercial designation. The reasons for the postponement of the reduction in duties were broad and general, and the language used to carry into effect the purpose of Congress was also broad and general. The object of the Wilson bill was to reduce duties. The bill itself went into effect on August 27, 1894. There must have been a special reason for postponing the reduction of duties on manufactures of wool. This reason was the one stated. The language is to be construed so as to effectuate the policy of Congress in postponing the reduction of duties on goods manufactured of wool.

The decisions of the lower courts were based upon technical grounds, the contention of opposing counsel being that this was a case for the application of the rule that "where an article is specially provided for in a tariff act,

general terms in the same or a subsequent act, which would otherwise include it, have no application to it," citing *Arthur* v. *Rheims*, 96 U. S., 143; *Arthur* v. *Lahey*, 96 U. S., 112; *Worthington* v. *Abbott*, 124 U. S., 434; *Robertson* v. *Salomon*, 130 U. S., 412, and *Robertson* v. *Glendenning*, 132 U. S., 158. This rule is invoked upon the assumption that paragraph 283 of the act of 1894 provides for a duty on "worsted dress goods" *eo nomine*.

I have no quarrel with the rule, but it does not apply in this case. Paragraph 283 of the act of 1894 does not levy a duty on "worsted dress goods" *eo nomine*. It does not levy a duty on "worsted dress goods" by a commercial designation. It does not levy a duty on "worsted dress goods" as distinguished from woolen dress goods. It does not levy a separate and distinct duty upon "worsted dress goods." It levies a duty on *dress goods* whether made of "wool, worsted, the hair of the camel, goat, alpaca, or other animals." The goods are defined neither specifically, *eo nomine*, nor by a commercial designation, but by a special description addressed to the quality and material of the goods in question. The quality is "women's and children's dress goods," etc.; the material, "wool, worsted, the hair of the camel, goat," etc. The case of *Barber* v. *Schell* (107 U. S., 617), is in point. In that case the words "cotton laces, cotton insertings," etc., used in the act of 1846, were held to be designations of articles by special description of quality and material, and the general provisions in the act of 1857 transferring to schedule C "all manufactures composed wholly of cotton which are

bleached, printed, painted, or dyed," thus imposing a different duty on such goods, was held to apply. The court, speaking by Mr. Justice Blatchford, says (p. 621):

> The designations qualified by the word "cotton" in the act of 1846 are designations of articles by special description, as contradistinguished from designations by a commercial name or a name of trade. They are designations of quality and material.

The cases of *Homer* v. *The Collector* (1 Wall., 486), *Reiche* v. *Smythe* (13 Wall., 162), *Smythe* v. *Fiske* (23 Wall., 374), *Arthur* v. *Morrison* (96 U. S., 108), *Movius* v. *Arthur* (95 U. S., 144), *Arthur* v. *Lahey* (96 U. S. 112), and *Arthur* v. *Rheims* (96 U. S. 143), are distinguished by the court on the ground that the principles involved in those cases and similar cases is, that the special designation of an article by a commercial name will prevail over a general term in a later act, but that this principle had no application to the case of *Barber* v. *Schell*, which was not, as to cotton laces and cotton insertings, one of designation by commercial name. (107 U. S., p. 623.) The court cites with approval the case of *Reimer* v. *Schell* (4 Blatchford, 328), in which it was held that certain colored hosiery, composed wholly of cotton, came within the description of "all manufactures, composed wholly of cotton, which are bleached, printed, painted, or dyed," used in the act of 1857. With respect to the phrase "all manufactures, composed wholly of cotton, which are bleached, etc.," Nelson, judge, says (bottom p. 329):

> The goods fall directly within the description, "all manufactures, composed wholly of cotton, which are bleached, printed, painted, or dyed."

> The legislature designates the articles by special description as contradistinguished from a designation by a commercial name; and the proper inquiry is as to their qualities and characteristics, with a view to ascertaining if they come within the description. If they do, no argument can take them out of the rate of duty which has been imposed.
>
> It is said that there are various manufactures composed wholly of cotton, bleached, printed, painted, or dyed, other than cotton hosiery, such as muslins, lawns, calicos, velvets, handkerchiefs, etc., to which the clause applies; and such is the proof in the case. But, if the hosiery in question comes equally within the description, I see no reason for distinguishing these goods from those above referred to, and which it is admitted fall within the section.

The rule here stated applies in construing the words "manufactures of wool" in paragraph 297 of the act of 1894. These words do not constitute a special designation *eo nomine*, nor do they amount to a commercial designation. The articles with respect to which the reduction of duties is postponed are designated by special description as contradistinguished from designation *eo nomine* or by a commercial name. To ascertain whether an article comes within this description it is necessary to inquire as to the material out of which it is made. Such inquiry in the case of worsted dress goods results in ascertaining that the material out of which the article is produced is wool. This fact—the fact as to the raw material out of which made—settles the question and brings the article within the description of paragraph 297. The process of manufacture, whether the comb-

ing or carding, whether the worsted or felt, does not postpone the reduction, but the material does. If the article is made of the wool of the sheep, the reduction does not take effect. The cases of *Elliott* v. *Swartout* (10 Pet., 137), *Riggs* v. *Frick* (Taney, 100), and *Seeberger* v. *Cahn* (137 U. S., 95) are not in point. The tariff provisions involved in those cases separated worsteds from woolens for dutiable purposes, levying a distinct rate of duty on worsteds from that levied on woolens. Within the meaning of those statutes manufactures of worsted could not be regarded as manufactures of wool. Mr. Justice Gray, speaking for the court in *Seeberger* v. *Cahn*, was careful to point this out (137 U. S., bottom p. 97):

> Though worsted is doubtless a product of wool, and might, in some aspects, be considered a manufacture of wool, yet, manufactures of worsted being subjected by the second paragraph *to different duties* from those imposed by the first paragraph on manufactures of wool, it necessarily follows that a manufacture of worsted can not be considered as a manufacture of wool within the meaning of this statute.

But in the present case there is no distinction made by the statute between worsteds and woolens. For dutiable purposes the acts of 1890 and 1894 treat wool and worsted as equivalent expressions. Within the meaning of these acts, worsted is not only a product of wool, but is considered and treated as a manufacture of wool.

It may be asked, Why not construe "wool," in paragraph 297 of the act of 1894, so as to include the hair

of the camel, goat, alpaca, and other like animals? Why restrict the postponement of the reduction of duties to manufactures of wool and not hair?

The acts of 1890 and 1894 distinguish between "wool of the sheep" and "hair of the camel, goat, alpaca, and other like animals," as raw material. There is no line drawn between wool and worsted as raw material. What Congress had in mind when inserting paragraph 297 in the act of 1894 *was to take care of the wool industry* of this country—farmers and manufacturers. *It was not looking out for the camel industry, or the goat industry, or the alpaca industry;* so it used language which applied to the matter under consideration, "wool." To furnish the farmers a market for the spring clip of 1894, to guarantee the manufacturers the fall market for goods made out of the spring clip, was the object of Congress.

Suppose paragraph 297 had read: "The reduction of the rates of duty herein provided for manufactures of wool of the sheep, and hair of the camel, goat, alpaca, and other like animals, shall take effect January 1, 1895," would anyone contend that goods manufactured of wool by the worsted process were not included?

VI.

The Dingley Act of May, 1890, was an administrative measure, amounting to a legislative direction that thereafter worsteds should be treated as woolens for dutiable purposes. With the policy thus defined by Congress, and since pursued in all tariff enactments, this court will not interfere.

The Dingley Act of May 9, 1890, construed in *United States* v. *Ballin* (144 U. S., 1), directing the Secretary of the Treasury to classify as woolen cloths all imports of worsted cloth, whether known under the name of worsted cloth or under the name of worsted, or diagonals, or otherwise. This act has never been expressly repealed, and many authorities might be cited showing it has not been repealed by implication. In the circuit court of appeals it was contended by counsel for the Government that the Dingley Act was intended to abrogate the old rule of construction based on the commercial designation; that worsteds were thereafter to be classified as woolens, and that therefore it was a permanent instruction, to be followed by customs officers until expressly repealed, irrespective of changes which might be subsequently made in rates of duty on woolen or on worsted cloth. Respecting this contention Judge Lacombe says (Rec. p. 20):

> If the Dingley Act were given the construction approved by the circuit court in the southern district of New York in *Ballin* v. *United States* (45 Fed. Rep., 170), there might be force in this contention. It was held in that case that this statute was purely administrative, regulating a special method of classification to be carried out by official action of the Secretary of the Treasury, and with nothing on its face to indicate that it was intended to repeal or in any way alter any act imposing customs duties. If it were a mere administrative regulation, it might fairly be urged it would remain in force until some other administrative statute described some different method of classification. But the difficulty here is

that this decision of the circuit court was reversed by the Supreme Court. (*United States* v. *Ballin*, 144 U. S., 1.) That court held it was a self-executing act providing for a rate of duty on woolen cloths. In other words, its effect was to amend the tariff of 1883 by inserting therein a provision for worsted cloths, laying upon such cloths the same rate of duty as that tariff prescribed for woolen cloths. Subsequently the McKinley Act of October 1, 1890, was passed. It contains paragraphs covering the entire field of wool and worsted manufactures, including woolen and worsted cloths, and of course supersedes the earlier tariff act of 1883, and the Dingley Act, which, as construed by the Supreme Court, was simply an amendment of that act. The Dingley Act is therefore no longer in force.

A careful reading of the decision of the Supreme Court in *United States* v. *Ballin* will show that this court held the Dingley Act to be an administrative act, an imperative direction to the Secretary of the Treasury, as the chief administrative officer in the collection of duties, to place all worsted cloths, by whatever name properly known or known to the trade, within the category of woolen cloths; in other words, to classify all worsted cloths as woolen cloths, and of course, if so classified, subject to the duty imposed on such cloths. Of course, the effect of this act was to make the duties on worsted cloths after that time such as were placed by the act of 1883 on woolen cloths.

Since the passage of the McKinley Act, the necessity for applying the direction in the Dingley Act, in the classification of worsteds as woolens, ceased to operate,

because the same duties were levied by the McKinley Act on articles manufactured of wool, whether by the woolen or worsted process; but in view of the enactment of paragraph 297 of the Wilson Act and the contention of the importers that a line of distinction should be drawn between worsteds and woolens for dutiable purposes, the Dingley Act, in its administrative feature, operates as a prohibition to customs officers to admit of any distinction in classification between worsteds and woolens for dutiable purposes.

Ever since May, 1890, when the Dingley Act was passed, Congress, following the line of policy therein marked out, has steadily refused, in its tariff enactments, to recognize any distinction for customs purposes between woolens and worsteds. Will this court renew a distinction which Congress has wisely discarded?

It is submitted that the judgment below should be reversed.

JOHN K. RICHARDS,
Solicitor-General.

DECEMBER 15, 1897.

APPENDIX.

PROGRESS IN THE MANUFACTURE OF WOOL INTO WOOLENS AND WORSTEDS.

1843. Penny Cyclopædia. London. Vol. 27.

"Wools are divided into two great classes—*clothing wools* and *combing wools*, or *short wools* and *long wools;* and the fabrics woven from them are termed *woolens* or *worsteds* according as the one or the other is employed. Clothing wools possess in high perfection that peculiar property which enables the fibers to "felt" or interlace one among another and to form thereby the dense, compact material of which men's garments are so largely made in this country; whereas combing wools, though *long* in fiber, are *deficient* in the *felting* property and are therefore employed for *stuffs*, merinos, hosiery, and a large number of fabrics which do not undergo the felting process. The manner in which these differences affect the routine of manufacture will be seen further on."

Page 553:

"The long wools for worsted fabrics, not requiring to undergo the felting process, pass through a circle of operations *different* from those hitherto noticed. * * * *All* combing wools are longer in fiber than the clothing wools, but they are subject to the division into long and short combing wools; the long, varying from *six* to *twelve* inches in length, being used principally for *coarse worsted goods*, and the short, from four to seven inches, being used for hosiery and some other purposes."

1856. Encyclopedia Americana. Boston. Vol. 13, p. 252.

"There are two sorts of wool which afford the basis of different fabrics, the long wool or worsted, in which the fibers are rendered parallel by combing, the material of which *camlets, bombazines*, etc., are made, and the short wool prepared by carding, like cotton, which is used, in different degrees of fineness, for *broadcloths, flannels*, and a *multitude* of *other fabrics*. * * * In articles which are made of long wool the texture is *complete* when the stuff issues from the loom. * * * But in cloths made of short wool the web is, etc., * * * and requires to be submitted to another operation called felting, by which the fibers are made to felt and combine more closely."

1863. New American Cyclopædia. New York. Vol. 16, p. 542:

"As the rule, then, the short-stapled fleece wools *only are made into cloths*, both the long fleece and pulled wools going to the *other sort of fabrics*. The length of fiber in the former ranges usually from *one* to *three* or *four inches;* if longer, it is cut before working. The two distinct classes of fabrics thus established are those known, respectively, under the general appellations of woolens and worsteds. It has, however, *become not unusual* to *intermix* some portion of long or *combing wool* in *cloths proper*, while in the making of *merinos* and many other *worsted fabrics* definite proportions of other materials, more commonly cotton, are now *regularly* and very *generally combined*, both these deviations from the ostensible characters of the goods being facilitated by the *improvements*, or at least modifications, introduced into *the modern machinery employed in the factories.*"

* * * * *

"Thus the sharp distinction between woolens and worsteds on the one hand, and between these and fabrics

of other material on the other, has in part disappeared, and worsteds which could originally be said to be made from combed, not carded, wool, must now be described as made from wool either combed or combed and carded, and moreover as being generally not of simple wool, but mixed fabrics."

* * * * *

"The combing of the wool is still performed by hand in some instances, though more commonly by machinery." * * *

"The worsted manufactures of England have now for many years been gaining upon those of woolens, among the causes of this change being * * * that the improvements in machinery have greatly facilitated the combing of the wool, and *even of that having a shorter fiber than could formerly be worked in this way*, &c."

The tendency thus being for worsteds to overtake woolens, and the two processes to approach each other in similarity of product, we find their manufacture stands in 1888 as follows:

1888. Encyclopædia Britannica, ninth edition, vol. 24, p. 658.

The general distinction between woolens and worsteds is given, then follows:

"At all points, however, woolen and worsted yarns as thus defined overlap each other, some woolens being made from longer wool than certain worsteds, and worsteds being when *made* from *short-staple* wool also *carded* as well as *combed;* and occasionally worsted yarn is spun on the mule frame, while originally confined to woolens, milling or felting is a *process done in all degrees*, woolen being sometimes not at all milled, while to some worsteds a certain milling finish is given." * * *

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In the Supreme Court of the United States.

OCTOBER TERM, 1895.

THE UNITED STATES,
Appellant,

vs.

ALEXANDER MURPHY & Co.,
Appellees.

Brief for importers, appellees, in opposition to application for a writ of certiorari to review a judgment of the Circuit Court of Appeals for the Second Circuit.

By way of introduction to this brief memorandum in opposition to the application for a writ of *certiorari* in this case, it is deemed proper to mention the fact not referred to in the moving papers, that the precise question involved in this case has been considered and decided adversely to the United States by the Circuit Court of Appeals for the Seventh Circuit, in the case of U. S. vs. Field, 34 U. S. App., 452. It is, therefore, sought by the Attorney-General to reargue in this Court a question upon which the Circuit Court of Appeals of two different circuits, have adopted the same view.

The Record: The record is entirely full and complete and open to no objection. The petition necessarily de-

scribed the appellants in the same terms as the decision and the entry. But the status of the importers fully appeared in the proceedings below, and reference to the stipulation (fols. 58-63), the assignment of errors (fols. 85, 86), the Attorney-General's notice of appeal (fol. 95) and the citation (fol. 100) will show the full names of the parties composing appellees' firm.

Three grounds are assigned for the application for this writ, viz.:

1st. The amount involved.

2d. The contention that the construction of the statute adopted by the Court of Appeals fails to effectuate the intent of Congress.

3d. The suggestion that the so-called Dingley Act of May 9th, 1890, is still unrepealed and in force.

I. The amount involved.

This argument has for some time past, we have observed, been made to do duty in substantially every brief filed in this Court, on behalf of the Government, in a tariff controversy. It seems a strange argument and one that should and would have little weight with this Court, and ordinarily no reply to it would be deemed necessary or proper. But, perhaps, this case affords as good an opportunity as any for calling attention to the logical consequences to which the policy of the executive branch of the Government on this subject seems inevitably to lead.

The period covered by the controversy as to the true construction of paragraph 297 of the Tariff Act was of only four months' duration, viz., from August 28th, 1894, to January 1st, 1895. The duties in dispute are those exacted in excess of the rates fixed by the present tariff on worsted goods imported or withdrawn

from warehouse during this brief period, and it can be fairly assumed that, in view of the construction of the law adopted by the Treasury Department, no goods were entered for consumption during this period which the importers could possibly do without until after January 1st, 1895. We are now informed on the authority of the Secretary of the Treasury that during this very brief period he caused to be collected in excess of the amount adjudged by two Circuit Courts of Appeals to be lawful nearly three hundred and fifty thousand dollars, *and the amount of the exaction is assigned as a reason for asking to have the case brought here.*

This case affords an excellent exemplification of the proposition which we now submit with great respect to the Court, viz., that, *if the largeness of the amount involved is to be regarded as a ground* for the bringing of revenue cases to this court by writ of *certiorari, practically every revenue case will have to come here,* as the amount involved is large in almost every instance. In the case of a continuing provision of the Tariff Law a year and a half is about the shortest time in which a test case can be carried through the Circuit Court of Appeals; and, as the higher duty is uniformly collected by the Treasury Department during the contest, a very large sum has been piled up by the time the Court of Appeals has decided the case, and then the largeness of the amount adjudged by that Court to have been illegally exacted is urged upon this Court as a reason for bringing the case here for review. In other words, *if the "amount" argument is to be allowed to prevail, the Courts of Appeals will cease to be final tribunals in revenue cases, as the statute has made them, and all this class of cases will have to come to this Court.* We submit, with great deference and respect, that, if this change in our judicial system is deemed necessary or desirable, it should be effectuated by legislation, and not by the exercise of the discretionary power of this Court to issue writs of *certiorari.*

Indeed, it may not be improper to suggest in this

connection (though not strictly material to the present application) that a disposition has been shown by the Attorney-General in the past few years to use the amount involved not only as a pretext for getting to this Court, but as an argument why the cases should be decided in his favor after they get here. And if that theory be carried to its logical conclusion it is a little difficult to see why the time of the Courts should be taken up with these matters at all, and why the Treasury Department should not be allowed to take any amount of money from an importer that it sees fit, and keep it forever.

As will be shown later on, *there was not the slightest excuse for making these exactions in the first instance*, for the Secretary of the Treasury had had his attention called by the Attorney-General (see 21 Op. Att.-Gen. 66, printed as an appendix to this brief) to decisions of this Court, which, in the plainest and most unequivocal language, negatived his right to take these higher duties. *Can the Executive ignore the decisions of this Court in order to collect a large sum in excessive duties, and then ask this Court to consider the largeness of the sum collected as a reason for exercising its discretion in his favor ?*

II. The intent of Congress.

In his opinion referred to above (21 Op. Att.-Gen. 66, see Appendix) the Attorney-General thus advised the Secretary of the Treasury :

> " Moreover, the phrase ' manufactures of wool ' has been given a very restricted meaning in prior tariff acts (Elliott vs. Swartwout, 10 Peters, 137 ; Seeberger vs. Cahn, 137 U. S., 95), and *there is a presumption in the absence of anything to the contrary that Congress intended it still to have the same signification* (Maddock vs. Magone, 152 U. S., 368, 371, 372)."

Now what was the restricted meaning which the Secretary of the Treasury was thus advised, was the signification which, it must be presumed, Congress intended it still to have.

We find it thus in Elliott vs. Swartout, 10 Peters, 137:

> "It being admitted, in this case, that *worsted is a distinct article*, well known in commerce under that denomination, we must understand Congress as using the term in that commercial sense, and as contradistinguished from wool and woolen goods, and other well known denominations of goods.
>
> "If, because worsted is made of wool, all manufactures of worsted become woolen manufactures, there would be no propriety in enumerating worsted goods as a distinct class."

And in Seeberger vs. Cahn (137 U. S., 95):

> "It being distinctly found, as a matter of fact, that the goods in question are called or known in the trade as 'worsteds,' and are composed mainly of worsted, but mixed with a small proportion of shoddy and of cotton, the Circuit Court rightly held that *they were subject to duty as manufactures of worsted, and not as manufactures of wool.*"

Upon what ground is this Court now asked to hold that Congress could not have intended the phrase "manufactures of wool," in paragraph 297, to have the same meaning which this Court had decided it to have, but must have intended it to mean what this Court had said it did not mean?

Why, the Attorney-General tells us (p.):

> "The only possible reason for postponing the reduction of duties on woolen goods was the injustice which manufacturers of these goods would suffer in case they had already laid in a large stock of raw material, which they still had on hand. It must, therefore, be presumed that Congress, while deliberating upon the new tariff

bill, had ascertained that woolen manufacturers were carrying a stock of raw material which equitably they should be allowed a few months' time to work off.

"This court can take judicial notice of facts generally known. It is generally known that manufacturers of wool were carrying such a stock, so that it would have been inequitable to put the new duties on manufactures of wool directly into operation."

Is it seriously supposed that this Court can take judicial notice of the alleged fact that on August 28th, 1894, manufacturers of woolen and worsted goods had just enough goods on hand to last four months?

The Attorney-General seems to feel called upon for an apology for his "inequitable" action in not giving the manufacturers of *hair* goods a few months' time to work off their stock, and he says:

"It may be asked why hair goods were not similarly treated, but *there may not have been such a stock of imported hair on hand.*"

Of this, also, is the Court to take judicial notice?

The question here is not what Congress might, could or should have done, but what it *did.* It used plain language which had been construed by this Court. The speculation as to its motives which the Court is now asked to enter upon is aptly referred to in the decision of the Court in Bate Refrigerating Co. vs. Sulzberger, 157 U. S., 1:

"In our judgment the language used is so plain and unambiguous that a refusal to recognize its natural, obvious meaning would be justly regarded as indicating a purpose to change the law by judicial action based upon some supposed policy of Congress. But, as declared in Hadden vs. Collector, 5 Wall., 107, 111, '*what is termed the policy of the Government with reference to any particular legislation is generally a very uncertain thing,* upon which all sorts of opinions, each

> variant from the other, may be formed by different persons. *It is a ground much too unstable upon which to rest the judgment of the Court in the interpretation of statutes.* 'Where the language of the act is explicit,' this Court has said, 'there is great danger in departing from the words used, to give an effect to the law which may be supposed to have been designed by the Legislature. * * * *It is not for the Court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions'* (Scott vs. Reid, 10 Pet., 524, 527)."

The Attorney-General quotes from numerous dictionaries and encyclopædias to show that worsted is technically and scientifically a species of wool. This is a proposition which nobody has ever denied. But as this Court said in American Net and Twine Co. vs. Worthington, 141 U. S., 468:

> " It is a cardinal rule of this Court that, in fixing the classification of goods for the payment of duties, the name or designation of the goods is to be understood in its known commercial sense, and that their denomination in the market when the law was passed will control their classification *without regard to their scientific designation, the material of which they may be made, or the use to which they may be applied.*"

For over half a century wool and wosted have been recognized as distinct articles for tariff purposes, and are still so distinguished in the present Tariff Act, in which they are referred to as distinct materials in paragraphs 280, 281, 283, 284, 285 and 286. A like distinction is to be found in paragraphs 391-398 of the Tariff Act of 1890.

The Attorney-General contends that:

> " Congress and this Court have treated *worsted not as something different from wool, but as a term more specific than wool.*"

But we fail to see how this helps him. If in this act Congress has provided in paragraph 286 for "worsted dress goods" *eo nomine*, and for the general class of articles "manufactures of wool," and in paragraph 297 has postponed the taking effect of the reduction on "manufactures of wool," how can this postponement be held to affect worsted dress goods without violating the fundamental principle of tariff construction that "*where an article is specially provided for in a tariff act, general terms in the same or a subsequent act which would otherwise include it have no application to it*, laid down in many decisions of this Court, including the following:

Arthur vs. Rheims, 96 U. S., 143.
Arthur vs. Lahey, *Id.*, 112.
Worthington vs. Abbott, 124 U. S., 433.
Robertson vs. Salomon, 130 U. S., 412.
Robertson vs. Glendenning, 132 U. S., 158.

The case of Riggs vs. Frick (Taney, 100) is instructive on this branch of the case:

> "The goods in question were composed of worsted and cotton, and the duties have been charged according to the Third Clause of the Second Section of the act of 14th July, 1832, which imposes a duty upon all manufactures of cotton, or of which cotton shall be a component part. The duties have been thus charged upon the distinction between 'worsted stuff goods' and 'woolen goods;' for *if it was supposed these goods were 'a manufacture of wool, or of which wool shall be a component part,' in the sense in which these words are used in the Act of Congress, then the duty charged might have been a much higher one than that exacted;* it must have been calculated according to the second clause of the second section, and not according to the third clause.
>
> "The description of the goods which are to pay the woolen duties, and of the goods which are to pay cash duties, are precisely the same. The Second Clause of the Second Section of the Act of 1832, among other things, provides that

the duty upon 'manufactures of wool, or of which wool shall be a component part,' shall be fifty per cent. *ad valorem;* the Fifth Section declares that 'except wool, manufactures of wool, or of which is a component part,' when the amount of duties exceed two hundred dollars, they are payable at the option of the importer, one half in three and the other half in six months; and the sixth section provides that upon 'manufactures of wool, or of which wool is a component part,' the duties shall be paid in cash. *Now, if these goods are not 'manufactures of wool, or of which wool is a component part,' within the meaning of the second clause of the second section, above quoted, which regulates the amount of duty, how can they be regarded as manufactures of that description within the meaning of the fifth and sixth sections above mentioned, which regulate the times of payment?* The language of all these clauses of the law evidently describes the same goods. And *if the goods in question are not chargeable with the woolen duties, it follows that the duties upon them are not payable in cash.*"

III. The So-called Dingley Act.

From the time of the passing of the McKinley Tariff Act, in 18 0, down to the argument of the case at bar, in 1895, the Treasury Department had never made a claim that this piece of special legislation remained in force. The claim was made in the Circuit Court of Appeals that this act was still in force, and that Court, referring to the decision of this Court in U. S. vs. Ballin (144 U. S., 1), thus disposes of the contention :

"That Court held that it was a self-executing act providing for a rate of duty on worsted cloths. In other words, *its effect was to amend the tariff of 1883 by inserting therein a provision for worsted cloths*, laying upon such cloths the same rate of duty as that tariff pre-

scribed for woolen cloths. Subsequently the McKinley Act of October 1, 1890, was passed. It contains paragraphs *covering the entire field of wool and worsted manufactures*, including woolen cloths and worsted cloths, and of course superseded the earlier tariff act of 1883, and *the Dingley Act*, which, as construed by the Supreme Court, *was simply an amendment of that act. In re* Straus, 46 Fed. Rep., 522; Kent vs. U. S., 68 Fed. Rep., 536.

"The Dingley Act therefore is no longer in force."

This ruling is in line with the decision of this Court in King vs. Cornell, 106 U. S., 395, where it is said:

"While repeals by implication are not favored, it is well settled that where two acts are not in all respects repugnant, if the later acts covers the whole subject of the earlier, and embraces new provisions which plainly show that it was intended as a substitute for the first, it will operate as a repeal."

See also

U. S. vs. Tynen, 11 Wall., 88.
U. S. vs. Claflin, 97 U. S., 546.
Norris vs. Crocker, 13 How., 429.

That the construction of this act by this Court was correctly interpreted by the Circuit Court of Appeals in this case, is apparent from the following language of this Court in the case of U. S. vs. Ballin, 144 U. S., 1:

"*It was an act suggested by the contest then pending in the Courts*, and which was finally decided adversely to the Government in the case of Seeberger vs. Cahn, 137 U. S., 95, in which it was held by this Court that 'cloths, popularly known as "diagonals," and known in trade as "worsted," and composed mainly of worsted, but with a small proportion of shoddy and of cotton, are subject to duty as a manufacture of worsteds, and not as a manufacture of wool, *under the Act of March 3, 1883*, C., 121.'

"The form of expression used in the act may be novel, but the intent of Congress is quite

clear. Recognizing the fact that the Secretary of the Treasury is head of the financial department of the Government, that to him, as its chief administrative official, is given the supervision of the Tariff and all the collections thereunder, it directs him to classify all worsted cloths as woolen cloths, and it gives to him no discretion. He may not classify some worsteds as woolens and others as not. There is given no choice or selection, but it is the imperative direction of Congress to him, as the chief administrative officer in the collection of duties, to place all worsted cloths, by whatever name properly known or known to the trade, within the category of woolen cloths; and, of course, if placed within that category, or, using the familiar language of the tariff, if 'classified as woolen cloths,' subject to the duty imposed on such cloths. If action were necessary by the Secretary of the Treasury to put this act into force, which was not as we think, such action was taken by the Circular letter of May 13, 1890, from the Treasury Department to all custom officers publishing the act for the information and guidance of the public.

"*Our conclusion, therefore, is* that the act was legally passed, and that, by its own terms and irrespective of any action by the Secretary of the Treasury, *the duties on worsted cloths were to be such as were placed by the Act of 1883 on woolen cloths.*"

The decisions cited by the Attorney-General are not in point. Those which relate to tariff acts arose under a system where several tariff acts were in force at the same time, and, under the rulings of this Court, were all to be considered in *pari materia*. But the Tariff Acts of 1883, 1890 and 1894 were comprehensive tariff acts, which superseded and repealed all prior tariff legislation.

See *In re* Straus and Kent vs. U. S., *supra*.

Even if the Dingley Act were still in force, it would have no application to the case at bar. It provided

simply that "worsted cloths should be classified as woolen cloths." There was an *eo nomine* provision in the Act of 1883 for woolen cloths. The act did not provide that worsted dress-goods should be classified as woolen cloths, nor that all worsted goods should be classified as wool goods. The Act of 1890 contained an *eo nomine* provision for woolen cloths, and made the duty upon them a compound *pound* and *ad valorem* duty upon them according to value *per pound*. The Collector made no attempt to classify them under this provision, but assessed them with the *compound square yard* and *ad valorem* duty provided for them according to value per square yard. *The Treasury Department has uniformly held that the term cloths is a technical trade term, and does not include dress goods* (see synopsis of decisions of Treasury Department, 9400 [1889], 10,078 [1890], 11,218 [1890]).

The decisions of the lower Courts may rest (as suggested in the concluding paragraph of the Attorney-General's brief) upon "a purely artificial and technical construction of the statute," but *it is a construction which the lower Courts took from this Court*, and which *Congress must be assumed to have taken from the same source*, and there is therefore no reason why the decision of the Circuit Court of Appeals should be reviewed by the Court whose rulings it has followed.

The petition should be denied.

CHARLES CURIE,
DAVID IVES MACKIE,
Attorneys for Appellees.

W. WICKHAM SMITH,
Counsel.

APPENDIX.

Opinion of Attorney-General on Par. 297.

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., October 9, 1894.

SIR—The new rates of import duties prescribed by Section 1 of the Tariff Act of August 28, 1894, went into effect immediately, "unless otherwise specially provided for." Paragraph 297 of that act provided that "the reduction of the rates of duty herein provided for manufactures of wool shall take effect January 1, 1895." That paragraph closes Schedule "K" of the Act, whose heading is "Wool and Manufactures of Wool." The schedule does not, however, deal with wool and manufactures of wool alone. It distinguishes repeatedly between "wool, worsted, the hair of the camel, goat, alpaca or other animals." It includes also certain manufactures of flax and cotton.

You ask my opinion whether paragraph 297 refers solely to merchandise of which wool, the product of the sheep, forms the material, or whether the product of the camel, goat, alpaca or other animals is equally included.

The general intent of the act was to effect an immediate, as well as extensive, reduction of duties. To postpone the reduction in the case of any specific article, the article must be brought clearly within some exception to this general intent. *All doubts arising under the act are presumptively to be resolved in favor of the lower rate of duty*, save where the act mentions or describes the same article in two different places, under two different rates, when the higher rate governs.

"Wool," within dictionary definitions, includes the hair of the alpaca and of the Angora goat; it never is used to include all goat's hair, nor yet camel's hair, nor cow hair or horse hair. Throughout Schedule "K," except in the heading, it is undoubtedly used so as to exclude even hair of the kinds first mentioned. *Moreover, the phrase "manufactures of wool" has been given a very restrictive meaning in prior tariff acts* (Elliott vs. Swartwout, 10 Peters, 137; Seeberger vs. Cahn, 137 U. S., 95), and there is a presumption in the absence of anything to the contrary that Congress intended it still to have the same signification (Maddock vs. Magone, 152 U. S., 368, 371, 372).

If the heading of Schedule "K" were intended as an accurate and comprehensive description of its contents, the question would arise whether the heading or the contents should control, and it might be argued that hair, flax and cotton were all wool. But the heading has little significance. It is intended only for a general suggestion as to the character of the articles within the schedule (Hollender vs. Magone, 149 U. S., 586, 591; Seeberger vs. Schlesinger, 152 U. S., 581, 583). If the rule of construction were otherwise, then sponges would be either "chemicals, oils or paints," and cork would be either "flax, hemp or jute."

Moreover, it is proper to consider, as an aid to construction, the original form of the bill and the changes made by amendment. The bill, as it first passed the House of Representatives, in the same paragraph with the exception above quoted concerning "manufactures of wool," had further provisions as to "all rates of duty in the woolen schedule." The latter was stricken out in the Senate, but serves to show *that the distinction was brought to the attention of Congress.*

I am, therefore, very clearly of the opinion that the word "wool," as used in paragraph 297, refers to hair of the sheep only, and that the new duties upon articles made of the hair of other animals went immediately into effect upon the passage of the act.

You also ask my opinion whether the phrase "manufactures of wool," in that paragraph, is applicable to articles of which wool, as so defined, although a component material, is not the material of chief value. I would answer this question in the negative (Arthur vs. Butterfield, 125 U. S., 70, 75; Herrman vs. Robertson, 152 U. S., 521, 524).

Very respectfully,

LAWRENCE MAXWELL, JR.,
Acting Attorney-General.

TO THE SECRETARY OF THE TREASURY.

Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES,
Appellant,

vs.

ALEXANDER MURPHY & CO.

STATEMENT.

On August 29th, 1894, the appellees imported at the Port of New York and entered for consumption certain worsted dress goods (Rec., fols. 25, 26). The Collector assessed upon them a duty of 12 cents per square yard and fifty per cent. *ad valorem*, under paragraph 395, Schedule K of the Tariff Act of October 1, 1890 (fol. 26). The appellees, protesting, claimed them to be dutiable under paragraph 283, Schedule K, Tariff Act of August 28th, 1894 (fol. 29). The Board of Appraisers found (fol. 33):

"(2) That said merchandise consists of fabrics commercially known as women's and children's dress goods, composed of worsted weighing less than four ounces to the square yard."

They held the Collector's classification to be correct by virtue of the construction they put upon paragraph 297, Schedule K, of the Tariff Act of 1894 (fols. 32–43). The Circuit Court reversed their decision (Opinion, fols. 64–77). The Court of Appeals affirmed the

Circuit Court decision (Opinion, fols. 36–39). The case was brought here by writ of *certiorari*.

Women's and children's dress goods composed of worsted have been provided for in every general tariff act from 1864 to 1897. See

Act June 30, 1864, 13 U. S. Stat. at Large, 202, Sec. 5.
Act Mch. 2, 1867, 14 U. S. Stat. at Large, 559, Sec. 2.
Revised Statutes, Sec. 2504, Sch. L.
Act March 3, 1883, 22 U. S. Stat. at Large, 488, Sch. K.
Act Oct. 1, 1890, 26 U. S. Stat. at Large, 567, Sch. K., par. 395
Act Aug. 28, 1894, 28 U. S. Stat. at Large, 509, Sch. K., par. 283.
Act July 24, 1897, 30 U. S. Stat. at Large, 161, Sch. K., par. 369.

Statutes Construed.

The following are the provisions of law construed in the decisions under review :

Act of October 1st, 1890, par. 395 :

> " On women's and children's dress goods, coat linings, Italian cloth, bunting, and goods of similar description and character, composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, and not specially provided for in this act, the duty shall be twelve cents per square yard ; and in addition thereto fifty per centum *ad valorem*.
>
> "*(b)* Provided, That on all such goods weighing over four ounces per square yard the duty per pound shall be four times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto fifty per centum *ad valorem*."

Act of August 28th, 1894, par. 283 :

> " On women's and children's dress goods, coat linings, Italians cloth, bunting, or goods of simi-

lar description or character, and on all manufactures, composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, including such as have India rubber as a component material and not specially provided for in this Act, valued at not over fifty cents per pound, forty per centum *ad valorem ;* valued at more than fifty cents per pound, fifty per centum *ad valorem.*"

Act of May 9th, 1890 (26 U. S. Stat. at Large, p. 205) :

> " That the Secretary of the Treasury be, and he hereby is, authorized and directed to classify as woolen cloths, all imports of worsted cloths, whether known under the name of worsted cloth or under the names of worsteds, or diagonals, or otherwise."

In the case of U. S. vs. Field, 34 U. S. App., 452, the Circuit Court of Appeals for the Seventh Circuit construed paragraph 297 of the Tariff Act of 1894. That Court reached the same conclusions as the Circuit Court of Appeals for the Second Circuit. The importation in that case was Tournay velvet carpet, which, like women's and children's dress goods, was provided for *eo nomine* in the Act of 1894. Two Circuit Courts of Appeals are therefore in accord as to the unsoundness of the Government contention in this case.

POINTS.

I.

The provisions of paragraph 297 have no relation to the article in question here, because it is provided for eo nomine in paragraph 283 as "women's and children's dress goods."

This point is not referred to in the decisions of the Courts below in this case, it having been apparently deemed unnecessary to refer to it in view of the fact that the goods were composed of worsted, and that the exaction complained of was clearly erroneous on another ground, but it was passed upon in the case of U. S. vs. Field, *supra.*

The principle of law is well settled that where an article is specially provided for in a tariff act, general terms in the same or a subsequent act which would otherwise include it have no application to it.

Arthur vs. Rheims, 96 U. S., 143.
Arthur vs. Lahey, *Id.*, 112.
Worthington vs. Abbott, 124 U. S., 433.
Robertson vs. Salomon, 130 U. S., 412.
Robertson vs. Glendenning, 132 U. S., 158.

The articles in question here are not dutiable as "manufactures of wool," because they are specifically provided for as "women's and children's dress goods." In assessing them under the Tariff Act of 1890 the Collector did not attempt to classify them as manufactures of wool under paragraph 392, but as "women's and children's" dress goods, under paragraph 395. If the article is not dutiable under a provision for manufactures of wool it cannot be covered by a provision postponing the reduction of duty on "manufactures of wool."

The point is well illustrated in the case of Briggs vs. Frick (Taney, 100), where the Court said:

> "The description of the goods which are to pay the woolen duties, and of the goods which are to pay cash duties, are precisely the same. The second clause of the second section of the Act of 1832, among other things, provides that the duty upon 'manufactures of wool, or of which wool shall be a component part,' shall be fifty per cent. *ad valorem;* the fifth section declares that 'except wool, manufactures of wool, or of which wool is a component part,' when the amount of duties exceed two hundred dollars, they are payable at the option of the importer, one-half in three and one-half in six months; and the sixth section provides that *upon 'manufactures of wool, or of which wool is a component part,' the duties shall be paid in cash.* Now, if these goods are not 'manufactures of wool, or of which wool is a component part,' within the meaning of the second clause of the second section above quoted, which regulates the amount of duty, how can they be regarded as manufactures of that description within the meaning of the fifth and sixth sections, above mentioned, which regulate the times of payment? The language of all these clauses of the law evidently describes the same goods. *And if the goods in question are not chargeable with the woolen duties, it follows that the duties upon them are not payable in cash.*"

The Court of Appeals was well within these decisions, therefore, in U. S. vs. Field, *supra*, when it said:

If, therefore, it were conceded that the carpets in question "might, in some respects, be considered a "manufacture of wool," yet, *being subject by this act to a particular duty*, they cannot be so regarded here, and it must be considered that the duty placed upon them took effect upon the passage of the act, *unaffected by paragraph 297, which applied only to manufactures of wool eo nomine.*

And its language is as applicable to worsted dress goods as to Tournay velvet carpets.

II.

There is no principle more firmly settled in the construction of the revenue laws than that for tariff purposes wool and worsted are distinct articles, and that manufactures of worsted are not dutiable under provisions for manufactures of wool.

This principle has been affirmed in the following cases:

Elliott vs. Swartwout, 10 Peters, 137.
Riggs vs. Frick, Taney, 100.
Seeberger vs. Cahn, 137 U. S., 95.
Ballin vs. Magone, 41 Fed. Rep., 921 (writ of error dismissed in Supreme Court).

The first of these decisions was made in 1836, the last in 1890.

The case of Elliott vs. Swartwout arose under the Tariff Act of 1832, and the question was whether worsted shawls with a cotton border were dutiable under a provision for "all other manufactures of wool or of which wool was a component part." The Court said:

> "It being admitted in this case that *worsted is a distinct article*, well known in commerce under that denomination, we must understand Congress as using the term in that commercial sense, and as *contradistinguished from wool*, and woolen goods, and other well-known denominations of goods."

In Seeberger vs. Cahn, this Court (per Mr. Justice GRAY) says:

> "It being distinctly found, as matter of fact, that the goods in question are called or known in the trade as 'worsteds,' and are composed mainly of worsted, but mixed with a small pro-

> portion of shoddy and of cotton, the *Circuit Court rightfully held that they were subject to duty as manufactures of worsted, and not as manufactures of wool.*"

And in Ballin vs. Magone, LACOMBE, J., said :

> " The tariff act itself, however, recognizes a difference between woolen and worsted articles ; between goods composed of worsted and goods composed of wool. We find the words ' wool ' or ' woolen ' and ' worsted ' used in contrast at least six times in this very schedule ; and the examination of successive tariff acts, back to, I think, 1816, shows an unbroken continuance of such contrasting use. It seems plain, therefore, that the words ' woolen cloths ' used in the paragraph on which the defendant relies, are to be taken as including only those woolen cloths which are not worsted, or composed of worsted, within the meaning of those terms (that is, ' worsted,' or ' composed of worsted '), as used in this tariff.
>
> " Upon this distinction, then, between the wool which is known to the tariff act as ' wool,' and the wool which is known to the tariff act as ' worsted,' the determination of this case rests."

The decision in Seeberger vs. Cahn was made November 17th, 1890, after the enactment of the tariff act of 1890, and as a result of that decision the Treasury Department on December 31st, 1890, abandoned its appeal from Judge LACOMBE's decision in the Ballin case (see S S. 11,011 in Appendix).

To break the force of these precedents covering one-half a century the appellant suggests that they all related to acts which laid a different rate of duty on worsted and woolen goods, and that the rule they lay down is no longer applicable, because under the later acts the rates of duty are the same.

This is, of course, begging the whole question. The question to be decided in this case is whether the rates of duty are the same. The appellant contends that

they are. We contend they are not. Our contention is that under the tariff act of 1894 the rates were to be the same after January 1st, 1895, but from the date of the passage of the act to January 1st, 1895, they were to be different. Of course, it is no answer to our contention to *assert* that the rates of duty are the same.

Moreover, it is a novel proposition that the distinction between two different articles can be abolished by subjecting them to the same rate of duty. Under the tariff of 1890 manufactures of metal paid 45 per cent. duty; manufactures of cotton 40 per cent. duty; manufactures of glass 60 per cent. duty. Under the tariff of 1894 these articles all pay 35 per cent. duty.

Could it, therefore, be contended that Congress had abolished the distinction between metal, cotton and glass, and that they became the same for tariff purposes then and thereafter.

The true principle is, of course, that, when Congress enumerates two different materials in the same paragraph, and affixes to them the same rate of duty, it recognizes them as different things. Otherwise, one name would do for both. If wool and worsted were the same thing, a provision for manufactures of wool, or other articles composed of wool, would include manufactures or articles composed of worsted. But Congress recognized that the word wool would not cover worsted by enumerating them separately not only in paragraphs 391, 392, 394, 395, 396, 397 and 398 of the Tariff Act of 1890, but in paragraphs 280, 281, 283, 284, 285 and 286 of the Tariff Act of 1894. If the word "wool" was not sufficient to cover "worsted" in each of these seven paragraphs of the Tariff Act of 1894, as Congress evidently considered it was not, why is it sufficient to cover worsted in paragraph 297.

Again, the argument of appellant proves too much. If, by putting the same rate of duty on wool and worsted in various paragraphs, Congress obliterated the distinction between them, so that the word "wool"

in paragraph 297 covered them both, then it must have equally abolished the distinction between wool and the hair of the camel, goat or alpaca, for these substances are also provided for in these same paragraphs at the same rate of duty. Yet, the Attorney-General has held (see Appendix), and the Secretary of the Treasury has followed his ruling, that paragraph 297 does not cover manufactures of these materials.

Not only is the appellant's argument unsound, but the premises on which it is based are not even correct, for, as pointed out by Judge TOWNSEND in his opinion below (fols. 69–71):

> "But the distinction in terminology, as already shown, has been uniformly preserved; and in Ballin vs. Magone (41 Fed., 921), Judge LACOMBE, referring to the provisions of the Act of 1883, says:
>
> "'The Tariff Act itself, however, recognizes a difference between woolen and worsted articles; between goods composed of worsted and goods composed of wool. We find the words "wool" or "woolen" and "worsted" *used in contrast at least six times in this very schedule;* and the examination of successive tariff acts, back to, I think, 1816, shows an unbroken continuance of such contrasting use. It seems plain, therefore, that the words "woolen cloths," used in the paragraph on which the defendant relies, are to be taken as including only those woolen cloths which are not worsted, or composed of worsted, within the meaning of those terms (that is, "worsted," or "composed of worsted") as used in this tariff."
>
> "*In five of the instances above referred to as illustrations of this distinction, the rates of duty were the same.*"

Not only has the general principle for which we are contending been repeatedly affirmed by the Courts, but there are special reasons connected with the particular Tariff Act now under consideration why it should be followed in the case at bar.

The Act of 1894 is entitled "An Act to reduce taxation, &c." It makes large reductions all through the woolen schedule, including the paragraph relating to women's and children's dress goods. When an exception in favor of higher taxation is incorporated in such a statute it should be strictly construed against the taxing power. Yet the Court is asked to give paragraph 297 a liberal construction repugnant to judicial decisions for sixty years.

Again, we may get some light from the legislative history of the Act of 1894.

Paragraph 297, as it passed the House of Representatives read as follows:

> "297. The reduction of the rates of duty herein provided for manufactures of wool shall take effect December second, eighteen hundred and ninety-four, *and on all rates of duty in the woolen schedule*, except on carpets, there shall be a reduction of one per centum *ad valorem*, to take effect on the first day of July, eighteen hundred and ninety-six, and thereafter of a like amount on the first day of July eighteen hundred and ninety-seven, eighteen hundred and ninety-eight, eighteen hundred and ninety-nine, and nineteen hundred, respectively."
>
> See Rec., fols. 41, 68, and Atty. Genl.'s Opinion in Appendix.

The date December 2, 1894, was subsequently changed to January 1st, 1895, and the remainder of the paragraph stricken out. So that Congress had clearly in mind the distinction between the expression "manufactures of wool," and the expression "on all rates of duty in the woolen schedule," and with deliberation and forethought retained the one and discarded the other, yet the Court is now asked to give the expression "manufactures of wool" the same meaning as the expression "all rates of duty in the woolen schedule," notwithstanding repeated adjudications of this Court that they will not bear that interpretation.

Failing to find any justification for the exaction complained of in the language of the statute, counsel for the Government ask this Court to seek and find an intent not disclosed by the language for the purpose of sustaining the higher duty. The language of the statute is not ambiguous and there is no reason why this Court should search for an undisclosed intent. The case is within the principle laid down by this Court in a recent case as follows:

> "In our judgment the language used is so plain and unambiguous that a refusal to recognize its natural, obvious meaning would be justly regarded as indicating a purpose to change the law by judicial action based upon some supposed policy of Congress. But, as declared in Hadden vs. Collector, 5 Wall., 107, 111, '*what is termed the policy of the government with reference to any particular legislation is generally a very uncertain thing*, upon which all sorts of opinions, each variant from the other, may be formed by different persons. *It is a ground much too unstable upon which to rest the judgment of the court in the interpretation of statutes.*' 'Where the language of the act is explicit,' this court has said, 'there is great danger in departing from the words used, to give an effect to the law which may be supposed to have been designed by the legislature. * * * It is not for the court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions' (Scott vs. Reid, 10 Pet., 524, 527)."
>
> Bate Refrigerating Co. vs. Sulzberger, 157 U. S., 1.

The same principle is laid down with reference to the revenue laws in the recent decision of this Court in the case of U. S. vs. Goldenberg (18 Supr. Ct. Rep. 28). Following is an extract from the opinion of Mr. Justice BREWER:

> "It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. No mere omission, no mere failure to provide for contingences which it may seem wise to have specially provided for justify any judicial addition to the language of the statute, * * * Certainly, there is nothing which imperatively requires the Court to supply an omission in the statute or to hold that Congress must have intended to do that which it has failed to do."

In support of the claim that Congress intended the words "manufactures of wool" in paragraph 297 to apply to all manufactures of the hair of the sheep, whether wool or worsted, and whether specially provided for in the schedule or not, the assertion is made that in August, 1894, manufacturers of woolen and worsted goods in this country had a surplus stock on hand, manufactured from wool upon which duty had been paid, and which it would have been unfair to them to put in competition with imported goods upon which no compensatory wool duties had been paid, and that it was the intent of Congress to allow these manufacturers a period of four months within which to dispose of this surplus stock without such injurious competition. Of the facts thus assumed, there is not a syllable of proof in this record. In the application to this Court for a writ of *certiorari* it was suggested that they were facts generally known, and of which this Court was entitled to take judicial knowledge. It would be difficult to conceive of a wider stretch of the doctrine of judicial notice than this. If this Court can take judicial cognizance of the condition of the woolen and worsted manufacturing industry in the summer of 1894, and of the fact that manufacturers had a stock of surplus goods on their hands, it is difficult to conceive of any alleged fact of which it could not take judicial notice.

The Attorney-General held that the new rates of duty on goods manufactured from hair went into immediate operation. Did he take judicial notice of the fact that the manufacturers of hair goods *did not* have a stock of surplus goods? If this Court can be asked to stretch the word woolen so as to make it include worsted upon any such theory of judicial notice, why could not and did not the Attorney-General stretch it so as to include hair? If the Court will examine his opinion (printed in our appendix) it will see that all the authorities to which he refers as establishing a restricted meaning of the term wool were cases which held that the term wool did not include worsted. In fact, it is impossible to read his opinion without arriving at the conclusion that had the question submitted to him been whether the term wool included either worsted or hair, he would have had to reply that it included neither, or else have left out all the reasons given for his conclusion, for every one of those reasons applies with as much force to worsted goods as hair goods.

III.

The Act of May 9th, 1890 (26 U. S. Stat. at Large, p. 205) **was repealed by paragraph 392 of the Tariff Act of 1890, and has not been in force since that time.**

The contention of the counsel for the appellant is that one statute will be held to repeal another only when the two are inconsistent. This is not the law. On the contrary, nothing is better settled than that a later statute may repeal an earlier statute though there is no inconsistency between them whatever. If the later statute covers the entire subject matter of the

earlier, and is clearly intended as a substitute for it, the earlier statute will be held to have been repealed.

The rule is thus stated in the case of King vs. Cornell, 106 U. S., 395, by the late Chief-Justice WAITE :

> " While repeals by implication are not favored, it is well settled that where two acts are not in all respects repugnant, *if the later act covers the whole subject of the earlier*, and embraces new provisions which plainly show that it was intended as a substitute for the first, it will operate as a repeal."
>
> See, also,
>
> U. S. vs. Tynen, 11 Wall., 88.
> W. S. vs. Claflin, 97 U. S., 546.
> Norris vs. Crocker, 13 How., 429.
> Tracy vs. Tuffly, 134 U. S., 206.

And this Court has very recently held that a provision for drawback on bituminous coal in the Tariff Act of 1883 was repealed by the Tariff Act of 1890, on the ground that " the Act of 1883 was clearly superseded in all its parts, and intended so to be, by the latter act."

U. S. vs. Allen, 163 U. S., 499.

The Attorney-General himself held (20 Op. Att.-Gen., 630) that Section 7 of the Act of February 8, 1875, relating to the free entry of foreign bags exported filled and returned empty, was repealed by the Tariff Act of 1890, and his opinion has been sustained by the Courts.

Kent vs. U. S., 38 U. S. App., 554.

Applying these principles to the statute in question we find that the Act of May 9th, 1890, corrected an inequality in the Act of 1883, by providing that worsted cloths should be classified as woolen cloths. When the Act of October 1st, 1890 was passed, paragraph 392 provided uniform duties for " woolen or worsted cloths."

Thus by the Act of October 1st, 1890 the entire subject matter of the classification of woolen and worsted cloths was disposed of, the Act of May 9th, 1890 was left without anything to apply to, and passed out of existence according to the doctrine of statutory repeals illustrated by the cases above cited.

It is sought to overcome the effect of the decisions above cited by raising the contention that the Act of May 9th, 1890 was not a tariff act, imposing duties, but a statute laying down a rule of classification and was therefore not intended to be superseded and was not, in fact, superseded by the Tariff Act of 1890. This contention necessitates a review of the history of the enactment of the Act of May 9th, 1890 and of the interpretation put upon it by this Court.

On the 23d day of May, 1889, the Secretary of the Treasury (Mr. Windom) promulgated a decision (S. S. 9400), holding that worsted cloths known as "diagonal worsteds" were dutiable, not as they had been theretofore classified under paragraph 363 of the Tariff Act of 1883, as "manufactures or worsted," but as "woolen cloths," under paragraph 362 of the same act. Importers immediately protested, and the suit of Ballin vs. Magone was brought to trial, in the United States Circuit Court for the Southern District of New York, in April, 1890. The charge of Judge LACOMBE followed the line of decisions cited under Point I. about wool and worsted, and the jury found a verdict for the plaintiff. The Goverdment appealed.

The Fifty-first Congress was then in session. A general revision of the tariff was about to be made. The McKinley Tariff Bill was reported from the Ways and Means Committee April 16th, 1890, six days before the Committee reported the Dingley Bill and 23 days before the passage of that Bill (see Cong. Rec., Vol. 21, Part 4, p. 3443). But it was deemed imperative to make immediate provision for this class of merchandise by special enactment, without waiting for a general tariff revision. The object of the law and reasons for haste

will be found fully stated in the report of the Committee on Ways and Means on the bill, a copy of which we have printed in the appendix.

No sooner had the act been put in operation than protests were filed against the assessment of duties under it, not only on the ground of its unconstitutionality, but on the further ground thus stated in the protest (as appears in record in case of U. S. vs. Ballin, 144 U. S., 1):

> "That even if the act was in force as a valid law in July, 1890, when these importations were made, *its language could not be construed to amend the clauses of the Tariff Act of March 3, 1883*, above referred to, because the Act of May 9, 1890, *did not purport to repeal any act imposing the pre-existing rate of duty on worsted cloths, or to impose any new duty thereon*; and because, whether or not the Secretary of the Treasury classified the goods in suit as woolen cloths, this did not alter the fact that they were manufactures of worsted and dutiable accordingly under the Act of 1883."

The Board of General Appraisers having overruled these protests, the case of Ballin vs. U. S. was brought to trial before Judge LACOMBE and decided in favor of the importers on grounds fully stated in the opinion of the Court, which is to be found in 45 Fed. Rep., 170, and from which the following is an extract:

> "*There is nothing on the face of this act indicating that it is intended to repeal or in any way alter any act imposing customs duties.* It is contended that, in the existing state of affairs when this act was passed, in the former statute, in the decisions of the courts and in the debates of Congress, we may find sufficient to warrant the conclusion that *it was the intention of Congress, by the passage of this act, to deal with the question of the duty to be laid upon goods such as are imported here*, and to change their status so as to lay upon them a higher rate. Conceding that, for the purposes of the argument only (and it is

only for the purposes of this argument that I am prepared to concede that proposition), let us see with what machinery they undertake to carry out that intent."

The United States appealed from this decision to this Court. The briefs filed on the appeal are matters of record here, and copies of them are now before us. The Attorney-General contended that the Dingley Act was a tariff law amendatory of the Tariff Act of 1883. Here are a few extracts from his brief:

> "*The Act of May 9, 1890, is, therefore, an implied amendment to the Act of 1883 and the worsted clause thereof* to the extent of imposing the same duty upon imported worsted cloths as upon woolen cloths (p. 8)."
>
> "The more clearly the learned Judge of the Circuit Court and the counsel for the importers show the inconsistency of the Act of May 9, 1890, with the Act of 1883, *the clearer becomes the intention of Congress to amend the Act of 1883*, and the clearer becomes the duty of the Court to carry out that intention" (p. 42).
>
> "It follows that the Act of May 9, 1890, is to be construed as if it read '*hereafter the Act of March 3, 1883, is to be so construed* that the term woolen cloths shall be held to include worsted clothes for purposes of classification for duty'" (p. 46).
>
> "It follows that *the effect of the Act of May 9, 1890, was to impose upon worsted cloths made of wool valued at less than 80 cents a pound, 35 cents per pound and 35 per cent. ad valorem*, and that the action of the Collector was correct" (p. 49).

On the other hand counsel for the importers contended on the argument, as he had in his protest, that the Dingley Act was not a tariff law, and did not affect the rate of duty on worsted cloths. Great stress was laid upon the fact that during the debate on the bill in Committee of the Whole in the House of Representatives the Chairman had ruled amendments about

rates of duty out of order as not germane to the bill, and that Speaker Reed had made the same rulings. We quote some passages from the brief of counsel for the importers:

> " In other words, *it is begging the question for the Solicitor-General to assume this act to be a tariff law*, and, upon such unfounded assumption, ask to have it construed accordingly. It must first be made to appear, from the act itself, that it is a tax law, before any such alleged purpose of its enactment can be considered in its construction " (p. 27).
>
> " Our claim, that *this bill could not have been intended to affect the duty upon worsteds*, fortified, as it is, by the public declaration of its sponsor and the Speaker's ruling, is further sustained by the consideration that, so construed, it violates those principles of tariff construction which this Court has repeatedly declared to be fundamental--*i. e.*, that, primarily, the commercial, and, secondarily, the common, designation is to determine the application of tariff laws " (p. 34).
>
> " It is a further presentation of the latter idea to add that, even had the Secretary actually ' classified ' our importations as woolens, *no then existing statute would, as a consequence of such classification, have affected them with the woolen duty* " (p. 35).
>
> " *To construe this bill as increasing duties upon worsteds works flagrant injustice*, since no time is allowed those merchants who had sold such goods ' to arrive,' or to be manufactured to order and delivered under special contracts to bring in such goods under the rate in contemplation of which such contracts were made. There was no reason to imagine *these articles would be affected by any special legislation, particularly in view of the general tariff bill then pending in Congress* " (p. 37).
>
> " If the phraseology of this act does not clearly indicate its applicability to any subject of legislation ; *if it does not expressly and inevitably impose a new duty upon worsted cloths* (in a certain contingency), then the old duty attached to such

importations by the Act of 1883 is the only one assessable thereon" (p. 40).

Having before it this opinion of Judge LACOMBE and these arguments of counsel for the respective parties, this Court reversed the decision of Judge LACOMBE and used the following language (U. S. vs. Rallin, 144 U. S., 1), speaking through Mr. Justice BREWER:

> "It was an act suggested by the contest then pending in the Courts, and which was finally decided adversely to the Government in the case of Seeberger vs. Cahn, 137 U. S., 95, in which it was held by this Court that 'cloths popularly known as "diagonals" and known in trade as "worsteds," and composed mainly of worsted, but with a small proportion of shoddy and of cotton, are subject to duty as a manufacture of worsted, and not as a manufacture of wool, under the Act of March 3, 1883, C. 121.' The form of expression used in the act may be novel, but the intent of Congress is quite clear. Recognizing the fact that the Secretary of the Treasury is head of the financial department of the Government, that to him, as its chief administrative official, is given *the supervision of the tariff and all the collections thereunder*, it directs him to classify all worsted cloths as woolen cloths, and it gives to him no discretion. He may not classify some worsteds as woolens and others as not. There is given no choice or selection, but it is the imperative direction of Congress to him, as the *chief administrative officer in the collection of duties*, to place all worsted cloths, by whatever name properly known or known to the trade, within the category of woolen cloths; and, of course, if placed within that category, or, using the familiar language of the tariff, if 'classified as woolen cloths, *subject to the duty imposed on such cloths.* If action were necessary by the Secretary of the Treasury to put this act into force, which was not as we think, such action was taken by the circular letter of May 13, 1890, from the Treasury Department to all Custom Officers

publishing the act for the information and guidance of the public.

"Our conclusion, therefore, is that the act was legally passed, and that *by its own terms and irrespective of any action by the Secretary of the Treasury, the duties on worsted cloths were to be such as were placed by the Act of 1883 on woolen cloths.*"

In view of this history of the origin and construction of the Dingley Act, can there be any question that it was a tariff law, laying duties on imported merchandise, and as such under the rulings of this Court, superseded and repealed by the Tariff Act of October, 1890.

IV.

Even if the Act of May 9th, 1890, was still in force, it would have no application whatever to the merchandise in controversy, and no relevancy whatever to the case at bar.

The Act says nothing about worsteds or wool as such, or about women's and children's dress goods. It says:

"That the Secretary of the Treasury be, and he hereby is, authorized and directed to classify as *woolen cloths* all imports of *worsted cloth*, whether known under the name of worsted cloth or under the name of worsteds, diagonals or otherwise."

And this Court said of it *(supra)*:

"Our conclusion, therefore, is that the act was legally passed, and that by its own terms,

> and irrespective of any action by the Secretary of the Treasury, the duties on worsted cloths were to be such as were placed by the Act of 1883 *on woolen cloths.*"

Now, the Act of 1883 provided for woolen cloths *eo nomine*, and imposed upon them certain specific duties *per pound* and certain *ad valorem* duties. The Act of May 9th, 1890, provided that worsted *cloths* should pay the duties *thus imposed on woolen cloths.*

The same act provided (paragraph 365) *eo nomine* for "women's and children's dress-goods composed of wool or worsted," and imposed upon them certain specific duties per *square yard* and certain duties *ad valorem.* Dress-goods paid the same duties whether composed of wool or worsted, under the Tariff Act of 1883, for nearly seven years before the Act of May 9th, 1890, was passed. That act could have no application to them, and did not purport to have any. It provided for worsted cloths, and made them pay the duty *imposed on woolen cloths under that name.* The term cloths, whatever might be its broad popular meaning, had a statutory meaning in the Act of 1883 and the Dingley Act *which excluded women's and children's dress-goods.* Its tariff and commercial meaning was thus defined by Secretary Windom in the decision (S. S. 9400) which occasioned the litigation leading to the enactment of the Dingley bill.

> "The term 'cloths' has a technical and restricted signification, and can properly be only applied to the *thicker and heavier fabrics of wool*, which are so finished and close as to be adapted for use by the *tailor* or *clothier* in the manufacture of *garments for men and boys.*"

The same definition was followed by the Department after the passage of the Act of May 9th, 1890. In S. S. 10,078, dated June 20, 1890, which we print in the appendix to this brief, the Secretary held that worsted portieres or hangings were not covered by the Dingley Act,

and, in May, 1891, the Board of General Appraisers again adopted the definition, and said (in S. S. 11,218, which will also be found in the appendix), that worsted moreens imported July 21, 1890, were "*of the nature of dress goods rather than cloth*," and were not dutiable under the Act of May 9th, 1890.

The absurdity of the contention here made will be further apparent on examination of the provisions of the Tariff Act of 1890.

Paragraph 392 of that act provided a sliding scale of mixed duties *(pound* and *ad valorem)* according to value per pound on "woolen or worsted goods," ranging from 33 cents *per pound* and 40 per cent. *ad valorem* to 44 cents *per pound* and 50 per cent. *ad valorem*. Paragraph 395 provided for "women's and children's dress goods composed wholly or in part of wool or worsted" a duty of 12 cents per *square yard* and 50 per cent. *ad valorem*. If the Act of May 9th, 1890, was in force and applicable to such goods, this provision would be nugatory and the goods assessed with *pound* and *ad valorem* duties as "woolen cloths" under paragraph 392, and yet we find in paragraph 395 a proviso *which limits the dress goods that shall pay a pound duty to those which weigh over four ounces per square yard*; flannels (which are certainly as much cloth as dress goods) are provided for in paragraph 393, and it is provided that, when they are valued at over 50 cents per pound, they shall pay the same duty as woman's and children's dress goods. Yet, upon the theory now set up as to the Act of May 9th, 1890, they should pay the duty provided in paragraph 392 for "woolen cloths."

In the case at bar the Collector held paragraph 297 of the present tariff act to apply to dress goods, and assessed them under the Act of 1890 at a duty of 12 cents per *square yard* and 50 per cent. *ad valorem*. Yet, if the Act of May 9th, 1890, was in force, it was his duty to assess them at 44 per cent *per pound* and 50 per cent. *ad valorem*. Probably no one would be more surprised than the Collector at the suggestion

that, with a provision in front of him for dress goods, he should assess dress goods under another provision for " woolen cloths."

Upon what theory would a taxing officer who was commanded by law to classify certain articles as " woolen cloths " pass by a provision for woolen cloths *eo nomine* in the tariff act, and assess the articles under some other paragraph.

V.

The Solicitor General's Brief.

We have just received (Wednesday, December 15th) the Solicitor-General's brief, and, although we think the points in it are covered in preceding portions of this brief, a few suggestions in reply may not be out of place.

The suggestion that worsted is a manufacture of wool, and that in early tariff acts expressions are to be found which would seem to recognize it as such, is sufficiently met by the fact that whenever the question came before the courts (in cases heretofore cited) it was decided that the provisions for the manufactures of wool did not cover worsted goods or manufactures of worsted. The acts under consideration (those of 1890 and 1894) certainly did not recognize worsted as a manufacture of wool (any more than they did hair) when they provided over and over again for manufactures or goods composed of wool, worsted, the hair of the camel, goat, alpaca or other animals. This Court is not asked to create a distinction which the law has not recognized. It is the Government which asks it to obliterate a distinction which the laws and the Courts have recognized.

Much of the Solicitor-General's brief is devoted to proceedings in Congress, of which this Court is asked to take notice, and upon which it is asked to give a different construction to the phrase " manufactures of wool " from that which it had repeatedly laid down in its own decisions. It seems a little strange that the Court should be asked to have recourse to all this investigation of proceedings in Congress to enlighten it on the meaning of a term which it has repeatedly construed, while it seems never to have occurred to the law officers of the Government that Congress might be expected to take any notice of the decisions of this Court (which had been repeatedly referred to in its own debates), and be presumed to use words charged with the meaning which this Court had repeatedly given to them. In all these cases there is a strenuous plea for judicial cognizance. How would it do to assume a little Congressional cognizance? If the words to be interpreted were novel and had never before come before the Courts, the invitation to explore the Congressional Record might be excusable. But when the words to be interpreted have been repeatedly interpreted by the Supreme Court, we submit it is asking a good deal to invite this Court to search through committee reports and speeches of members to see whether it cannot find ground for holding that Congress had ignored its previous decisions, and had used language without the slightest reference to such decisions. When we come to examine these debates we find a pathetic plea by the Solicitor-General for the farmer's spring clip. The speech of Mr. Wilson referred to was made on January 17th, 1894, and the bill did not ultimately go into effect until the 28th of August. Which spring clip is the Solicitor-General so solicitous about? If it was the spring clip of 1894 it would seem that might all have been disposed of before August 28th, and if it was the spring clip of 1895 that could not be saved for the reduction was to take effect on Jan-

uary 1st, 1895. The provision postponing the reduction on all duties in the woolen schedule was stricken out by the Senate before it sent the bill back to the House on July 6, 1894. If the saving of the spring clip was the reason for postponing all the reductions in the woolen schedule in January, the insured safety of the spring clip may have been the reason for striking out the postponement as to all rates in the woolen schedule in July. These are all matters of speculation, and we respectfully submit within the decisions in Bate vs. Sulzberger and U. S. vs. Goldenberg, which we have cited, very slender and unsafe foundations on which to base the construction of any statute, much less reverse an interpretation of particular language repeatedly laid down by this Court.

The Solicitor-General insists that the language to be interpreted here is not language of commercial designation. We are not asking to have it interpreted in the light of commercial designation. We are asking to have it interpreted in the light of a distinction made by Congress in all previous tariff acts in the tariff provision to be now construed and repeatedly recognized by this Court. If to urge that this should be done is to be denounced as being technical we must plead guilty, because we choose to assume, what the Solicitor-General chooses to ignore, that Congress knew of the technicality and legislated with reference to it.

The Solicitor-General says that, in all paragraphs in which the words wool and worsted are both used, the word worsted is used not for contrast but for inclusion, out of abundant caution. Why is not the same thing true of goat hair and camel's hair? These substances were expressly defined in the Act of 1890 as constituting a part of class 2, combing wool, and all the provisions on manufactured goods mentioned them as well as worsted. If manufactures of wool in paragraph 297 is broad enough to include worsted, why is it not broad enough to include hair? Yet, upon the Attorney-General's opinion that the word wool was used in

a restricted sense, enormous sums of money on goods imported between August and January composed of hair were remitted as duties.

In the publication relating to the production and consumption of wools and manufactures of wool referred to in the Solicitor-General's brief, it will be found that hair goods as well as worsted goods were included.

We find that the Solicitor-General does not endorse the view of the statute taken by the Board of General Appraisers when they held that paragraph 297 covered everything provided for in Schedule K. He could not do so without repudiating the opinion of his department printed in appendix. We have therefore refrained from arguing in refutation of this theory, as it would seem obvious that arguments to refute the proposition that the words "manufactures of wool" were equivalent to goods provided for in Schedule K, when that schedule provides for other goods besides wool goods, were unnecessary.

VI.

The judgment of the Circuit Court of Appeals for the Second Circuit should be affirmed.

Dated New York, December 14th, 1897.

CHARLES CURIE,
Attorney for Appellees.

W. WICKHAM SMITH,
Counsel.

APPENDIX.

(1) Opinion of Attorney-General on Par. 297.

WOOL AND WOOLEN GOODS.

(Telegram.)

TREASURY DEPARTMENT,
October 9, 1894.

Attorney-General has rendered opinion that the word "wool," as used in paragraph 297 of the new tariff act, refers to hair of sheep only, and that the new duties, under Schedule "K," upon articles made of the hair of other animals went immediately into effect from the date the act took effect. *Customs Officers will be governed accordingly.* Instructions of August 27 remain unchanged. *Collectors will reliquidate all entries covering goods classified contrary to above instructions.*

J. G. CARLISLE,
Secretary.

(6488 g.)

COLLECTOR OF CUSTOMS, New York.

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., October 9, 1894.

SIR—The new rates of import duties prescribed by Section 1 of the tariff act of August 28, 1894, went into effect immediately, "unless otherwise specially provided for." Paragraph 297 of that act provided that: "The reduction of the rates of duty herein provided for manufactures of wool shall take effect January 1, 1895." That paragraph closes Schedule "K" of the Act, whose heading is "Wool and manufactures of wool." The schedule does not, however, deal with wool and manufactures of wool alone. It distinguishes repeat-

edly between "wool, worsted, the hair of the camel, goat, alpaca or other animals." It includes also certain manufactures of flax and cotton.

You ask my opinion whether paragraph 297 refers solely to merchandise of which wool, the product of the sheep, forms the material, or whether the product of the camel, goat, alpaca or other animals is equally included.

The general intent of the act was to effect an immediate, as well as extensive, reduction of duties. To postpone the reduction in the case of any specific article, the article must be brought clearly within some exception to this general intent. *All doubts arising under the act are presumptively to be resolved in favor of the lower rate of duty*, save where the act mentions or describes the same article in two different places, under two different rates, when the higher rate governs.

"Wool," within dictionary definitions, includes the hair of the alpaca and of the Angora goat; it never is used to include all goat's hair, nor yet camel's hair, nor cow hair or horse hair. Throughout Schedule "K," except in the heading, it is undoubtedly used so as to exclude even hair of the kinds first mentioned. *Moreover, the phrase "manufactures of wool" has been given a very restrictive meaning in prior tariff acts* (Elliott vs. Swartwout, 10 Peters, 137; Seeberger vs. Cahn, 137 U. S., 95), and there is a presumption in the absence of anything to the contrary that Congress intended it still to have the same signification (Maddock vs. Magone, 152 U. S., 368, 371, 372).

If the heading of Schedule "K" were intended as an accurate and comprehensive description of its contents, the question would arise whether the heading or the contents should control, and it might be argued that hair, flax and cotton were all wool. But the heading has little significance. It is intended only for a general suggestion as to the character of the articles within the schedule (Hollender vs. Magone, 149 U. S., 586, 591; Seeberger vs. Schlesinger, 152 U. S., 581,

583). If the rule of construction were otherwise, then sponges would be either "chemicals, oils or paints," and cork would be either "flax, hemp or jute."

Moreover, it is proper to consider, as an aid to construction, the original form of the bill and the changes made by amendment. The bill, as it first passed the House of Representatives, in the same paragraph with the exception above quoted concerning "manufactures of wool," had further provisions as to "all rates of duty in the woolen schedule." The latter was stricken out in the Senate, but serves to show *that the distinction was brought to the attention of Congress.*

I am, therefore, very clearly of the opinion that the word "wool," as used in paragraph 297, refers to hair of the sheep only, and that the new duties upon articles made of the hair of other animals went immediately into effect upon the passage of the act.

You also ask my opinion whether the phrase "manufactures of wool," in that paragraph, is applicable to articles of which wool, as so defined, although a component material, is not the material of chief value. I would answer this question in the negative (Arthur v. Butterfield, 125 U. S., 70, 75; Herrman v. Robertson, 152 U. S., 521, 524).

Very respectfully,

LAWRENCE MAXWELL, JR.,
Acting Attorney-General.

TO THE SECRETARY OF THE TREASURY.

(2) Department Acquiescence in Judge Lacombe's Decision in Ballin vs. Magone.

REFUNDS ON WORSTED CLOTHS.

TREASURY DEPARTMENT, April 29, 1891.

SIR—The Department is in receipt of your letter of the 14th instant, in which you request to be informed

whether the Department has acquiesced in the decision of the Court in regard to the classification of worsted cloths, and whether it has authorized a refund of duties paid in excess on such merchandise.

In reply, I have to state that, on the 31st of December last, the Department addressed a letter to the collector of customs at New York (a copy of which is herewith enclosed), authorizing him, under the mandate of the Supreme Court in the case of Magone vs. Julius Ballin *et al.*, and on due entry of judgment to take the necessary steps for its settlement, and also to take steps for the settlement of other similar suits now pending, where the requirements of law as to protest, appeal, institution of suit, etc., have been fully complied with.

Respectfully yours,

O. L. SPAULDING,
Assistant Secretary.

(6682 v.)
COLLECTOR OF CUSTOMS, Providence, R. I.

(Letter above referred to.)

TREASURY DEPARTMENT, December 31, 1890.

SIR—The Department is in receipt of a letter from the Attorney-General, dated the 26th instant, in which he states that, in view of the decision of the United States Supreme Court in the case of Anthony F. Seeberger, collector, etc., v. Bernard Cahn *et al.*, which held that "though worsted is doubtless a product of wool, and might in some aspects, be considered a manufacture of wool, yet, *manufactures of worsted being subjected by the second paragraph (T. I., 363) to different duties from those imposed by the first paragraph (T. I., 362) on manufactures of wool, it necessarily follows that a manufacture of worsted cannot be considered as a manufacture of wool within the meaning of this statute*" (act of March 3, 1883), the writ of

error in the case of Daniel Magone, collector, etc., vs. Julius Ballin *et al.*, involving the question as to the classification of worsted diagonals, suitings, coatings, etc. (Synopsis 9400), cannot be sustained, and will be dismissed, inasmuch as the jury found in said case that the merchandise was exclusively of worsted.

You are therefore authorized, on due entry of judgment in said suit in the circuit court under the mandate of the Supreme Court, to take the necessary steps for its settlement, and also to take the same steps with reference to all other similar suits now pending, where the requirements of law as to protest, appeal, institution of suit, etc., have been fully complied with.

This decision will apply only to importations of worsted cloths made prior to the passage of the act of May 9, 1890 (Synopsis 10,020).

Respecfully yours,

WILLIAM WINDOM,

Secretary.

COLLECTOR OF CUSTOMS, New York.

(3) Report of Ways and Means Committee on Dingley Bill.

House of Representatives, Fifty-first Congress ; first session ; Report No. 1664.

CLASSIFICATION OF WORSTED CLOTHS AS WOOLENS.

(April 22, 1890.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.)

Mr. Dingley, from the Committee on Ways and Means, submitted the following report (to accompany H. R. 9548) :

The Committee on Ways and Means, to whom was referred the bill (H. R. 9548) providing for the classifi-

cation of worsted cloths as woolens, report the same back with a favorable recommendation.

The bill is made necessary in order to prevent a grave injustice being done to *manufacturers of worsted cloths* in the United States and to the Treasury by the classification of these goods under a paragraph of the present tariff law which imposes upon them a much lower and inadequate compensatory duty than is given woolen cloths, when as a matter of fact worsted cloths are not only made of clothing wool, but also as now made take the place of *fabrics known as woolen cloths.*

Under the tariff act of 1883, *woolen cloth was given a specific duty of 35 cents per pound* to compensate the American manufacturer for the duties on wool. Another paragraph of the same act provided a lower compensatory duty of from 10 to 24 cents per pound on flannels, blankets and manufactures of worsted valued less than 80 cents per pound, and 35 cents per pound on all such goods valued over 80 cents. These lower compensatory duties were intended for coarse, cheap, unfinished goods, not composed entirely of wool, like flannels, blankets and stuff goods, and *were not intended for any finished goods like cloths for men's wear.* Inasmuch as worsted cloths at that time were all, or nearly all, valued at more than 80 cents per pound, and would be subject to 35 cents per pound, specific duty, the attention of the manufacturers was not attracted to the danger lurking in the words " manufactures of worsted." It is clear that Congress intended to impose the uniform specific pound duty of 35 cents on all cloth made of wool ; as worsted cloth is made of the same wool, costs substantially the same, and is used for the same purposes as woolen cloth. But immediately after the passage of the act of 1883, imports of worsted cloth under the pound duties, intended for flannels and blankets, began to come in ; not, however, without continued protest from domestic manufacturers.

Thus, for several years our tariff, as administered, presented the anomaly of giving the manufacturer a

duty of 35 cents per pound on cloth made of carded wool as a compensation for the wool duty, while it gave to the manufacturer of worsteds valued less than 80 cents per pound a compensatory duty of only 10 to 24 cents, or, on the average, only half the wool duty, which was a manifest discrimination against our worsted manufacturers that began to seriously injure our own woolen manufacturing industry by giving foreign manufacturers a great advantage. So serious had this discrimination become that Secretary Fairchild called the attention of Congress to the necessity of legislation to correct it. A bill identical with the bill reported by your committee was presented to the House and referred to the Committee on Ways and Means at the first session of the Fiftieth Congress, and the provisions of that bill were included in the tariff bill reported at that session.

Subsequently the worsted manufacturers of the country presented their grievances to Secretary Windom, and pointed out that it was the intention of Congress to give a specific duty of 35 cents per pound as compensatory for the duty on wool to the wool manufacturer, and in view of the arguments made the Secretary *made a ruling May 23, 1889, classifying worsted cloths as woolen cloths.* Since that time worsted cloths have been so classified. The importers, however, appealed to the Courts, and a jury, under the instructions of the presiding judge of the United States district court for the southern district of New York, has found against the Government. The Secretary of the Treasury will carry the case to the United States Supreme Court, and until his order classifying worsteds as woolens shall be reversed by the court of last resort, the same duties will be collected on both classes of goods.

In this situation the importers, believing that they will ultimately prevail, are preparing to increase their orders for foreign worsteds and bring them in **before any general tariff legislation can**

be framed and take effect, in the expectation that they will be able ultimately to obtain a refund of all specific duties imposed upon them in excess of 10 to 24 cents per pound. Therefore, unless there shall be prompt legislation to correct the injustice done the worsted manufacturers, not only will they suffer by successive importations, but the Treasury may be called upon to refund many millions of dollars collected as duties on imported worsteds, all of which will go to increase the profits of the importers who will first take care to collect of their customers the duties paid.

The question presented by this bill is one which does not affect the points in dispute between political parties in regard to tariff legislation, *for whatever duties may be imposed on imports of manufactures of wool*, goods known as worsted cloths and the goods known as woolen cloths, both manufactured of wool and both used for the same purpose, should be subject to the same duties, and especially should this be the case with the specific duties which are simply the equivalents of the duties imposed by the law upon the wool of which they are made.

Your committee, therefore, believe that justice, as well as a due regard for the interests of the Treasury, require the passage of the accompanying bill.

(4) Department Decision that Worsted Portieres were not Covered by Dingley Act.

TREASURY DEPARTMENT, June 20, 1890.

SIR—The Department is in receipt of your letter of the 12th instant reporting on the communication of W. & J. Sloane, dated the 5th *idem*, relative to the action of the appraiser at your port in returning certain "manufactures of combed wool (or worsted) and cotton," and known commercially as "portieres" or

"hangings," imported by Messrs. Sloane, as dutiable under T. I. 362, by reason of the act of May 9, 1890 (see Synopsis 10,020).

You state that the entry has not yet been liquidated, and express the opinion that the act cited by the appraiser applies to worsted cloths that assimilate to the woolen cloths referred to in T. I. 362 in quality, texture and uses, and that said act does not repeal and make void the provision of T. I. 363 for "worsted" fabrics that are not cloths nor used for the same purposes as the woolen cloths covered by paragraph T. I. 362.

The department concurs in this view, which accords with the view expressed in its decision of May 27, 1889 (Synopsis 9,400, page 226), wherein it is stated that *the term "cloths" has a technical and restricted signification, and can properly be only applied to the thicker and heavier fabrics of wool, which are so finished and close as to be adapted for use by the tailor or clothier in the manufacture of garments for men and boys.*

Respectfully yours,
GEORGE C. TICHENOR,
Assistant Secretary.

(4845*f*).

COLLECTOR OF CUSTOMS, New York.

(5) Board of Appraisers' Decision that Worsted Moreens (Dress Goods) were not Covered by Dingley Act.

BEFORE THE U. S. GENERAL APPRAISERS AT NEW YORK, MAY 8, 1891.

In the matter of the protest, 761–A, of the H. B. CLAFLIN CO, against the decision of the COLLECTOR OF CUSTOMS AT NEW YORK, as to the rate and amount of duties chargeable on certain moreens imported per City of Richmond, July 21st, 1890.

OPINION BY SHARRETTS, GENERAL APPRAISER.

The evidence in this case tends to show that the merchandise in question is a worsted fabric popularly known as "Moreen." It is used for covering pew cushions and for upholstering purposes generally, also in making ladies' skirts, Duty was assessed upon it at thirty-five cents per pound and thirty-five per cent. *ad valorem*, under T. I. 362 (Act March 3, 1883, as a manufacture of wool, valued at not exceeding eighty cents per pound. The appellants claim that the goods are dutiable at 18 cents per pound, and 35% *ad valorem* under the provision in T. I. 363, for manufactures of worsted not specially provided for, valued at above 40 cents per pound and not exceeding 60 cents per pound. From an inspection of the official samples we find that the merchandise is a coarse fabric, twenty-four inches in width, composed of so-called "worsted" in the warp and weft, the one surface being glossy and smooth, and the other finished to resemble in appearance and to the touch mohair or poplin with a worsted design.

The analytical chemist in charge of the United States laboratory at this port reported that the merchandise

was composed of combed wool known as " worsted," and the testimony of experts who were called before us was to the effect that *it is not what is commonly or commercially known as worsted cloth, but is commonly known in the trade as worsted "moreen", and it partakes of the nature of dress goods rather than cloth.* We so find the facts, and hold that *the article is not covered by the act of May 9, 1890,* but is dutiable under T. I. 363, as claimed by the appellants. This ruling is in harmony with the decision of the Treasury Department in Synopsis 10,078.

UNITED STATES *v.* KLUMPP.[1]

CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 159. Argued January 20, 1898. — Decided February 21, 1898.

In paragraph 297 of the tariff act of August 27, 1894, c. 349, 28 Stat. 509, providing that "the reduction of the rates of duty herein provided for manufactures of wool shall take effect January first, eighteen hundred and ninety-five," the words "manufactures of wool" had relation to the raw material out of which the articles were made, and, as the material of worsted dress goods was wool, such goods fell within the paragraph.

[1] The docket title of this case is "The United States, Appellant, *v.* Alexander Murphy & Co."

Statement of the Case.

On the thirtieth day of August, A.D. 1894, John F. Klumpp and others, doing business as a partnership under the name of Alexander Murphy & Co., imported into New York certain merchandise consisting of women's and children's dress goods composed of worsted. The collector classified this merchandise and assessed it for duty under paragraph 395 of the tariff act of October 1, 1890, c. 1244, 26 Stat. 567, at twelve cents per square yard and fifty per cent *ad valorem*. The importers protested, claiming the goods to be dutiable under paragraph 283 of the tariff act of August 27, 1894, c. 349, 28 Stat. 509, at forty per cent, or fifty per cent *ad valorem*, according to the value per pound.

The Board of General Appraisers overruled the protest (G. A. 2769), and the importers carried the matter to the Circuit Court, which reversed the decision of the Board of General Appraisers. *Murphy* v. *United States*, 68 Fed. Rep. 908. On an appeal to the Circuit Court of Appeals for the Second Circuit, the decision of the Circuit Court was affirmed. *Murphy* v. *United States*, 38 U. S. App. 467. The case was then brought here on certiorari.

It was admitted below "that the classification of the merchandise by the collector was worsted dress goods, at twelve cents per square yard and fifty per cent ad valorem under schedule K, paragraph 395 of the tariff act of October 1, 1890."

And "that the merchandise in controversy is worsted dress goods, made from the fleece of the sheep, which has been combed and spun into worsted yarn, and is not composed of the hair of the camel, goat, alpaca or other animal than sheep."

Paragraph 395 of Schedule K of the act of October 1, 1890, entitled "Wool and Manufactures of Wool," read: "On women's and children's dress goods, coat linings, Italian cloth, bunting, and goods of similar description or character composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca or other animals, and not specially provided for in this act, the duty shall be twelve cents per square yard, and in addition thereto fifty per centum ad valorem: *Provided*, That on all such goods weighing over four ounces per square yard the duty per pound shall be four times the duty imposed

by this act on a pound of unwashed wool of the first class, and in addition thereto fifty per centum ad valorem."

Paragraph 283 of Schedule K of the act of August 27, 1894, c. 349, entitled "Wool and Manufactures of Wool," provided: "On women's and children's dress goods, coat linings, Italian cloth, bunting or goods of similar description or character, and on all manufactures, composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca or other animals, including such as have india rubber as a component material, and not specially provided for in this act, valued at not over fifty cents per pound, forty per centum ad valorem; valued at more than fifty cents per pound, fifty per centum ad valorem."

Paragraphs 280 to 286, inclusive, under this schedule, provided for duties on articles made, or composed, "wholly or in part of wool, worsted or the hair of the camel, goat, alpaca or other animals," except that paragraph 282, which referred to blankets, etc., omitted the word "worsted."

Paragraphs 287 to 296, inclusive, related to carpets, mats, etc., and the concluding paragraph of the schedule read: "297. The reduction of the rates of duty herein provided for manufactures of wool shall take effect January first, eighteen hundred and ninety-five."

Paragraph 685, one of the paragraphs of the free list, was as follows: "685. All wool of the sheep, hair of the camel, goat, alpaca and other like animals, and all wool and hair on the skin, noils, yarn waste, card waste, bur waste, slubbing waste, roving waste, ring waste and all waste, or rags composed wholly or in part of wool, all the foregoing not otherwise herein provided for."

Mr. Solicitor General for appellant.

Mr. W. Wickham Smith for appellees. *Mr. Charles Curie* was on his brief.

Mr. Chief Justice Fuller, after stating the case, delivered the opinion of the court.

Women's and children's dress goods, "composed wholly or

in part of wool, worsted, the hair of the camel, goat, alpaca or other animals," were dutiable under paragraph 395 of the act of October 1, 1890, at twelve cents per square yard and fifty per cent *ad valorem;* under paragraph 283 of the act of August 27, 1894, at forty or fifty per cent *ad valorem*, according to value. But by paragraph 297, the reduction of the rates of duty on "manufactures of wool" was not to take effect until January 1, 1895. And if that paragraph applied to worsted dress goods for women and children, then the collector was right, and the judgment must be reversed.

Was it intended that the words "manufactures of wool," as used in this paragraph, should include or exclude worsted goods?

Worsted goods are made out of wool, and are necessarily a manufacture of wool. The Century Dictionary defines "worsted" as a noun: "A variety of woollen yarn or thread, spun from long-staple wool which has been combed, and in the spinning is twisted harder than is usual;" and as an adjective: "Consisting of worsted; made of worsted yarn; as worsted stockings."

"Worsted is but wool, spun and twisted in a particular manner," said Mr. Justice Story, in *Whiting* v. *Bancroft*, 1 Story, 560. And in *Cahn* v. *Seeberger*, 30 Fed. Rep. 425, it was found by Judge Blodgett that: "Worsted is made by combing long fibred wools so that the fibres usually lie or are arranged alongside each other, while wool is treated by carding it so as to interlock the fibres with each other."

As between worsted yarns and woollen yarns the Encyclopædia Britannica says that the fundamental distinction "rests in the crossing and interlacing of the fibres in preparing woollen yarn, — an operation confined to this alone among all textiles, while for worsted yarn the fibres are treated, as in the case of all other textile materials, by processes designed to bring them into a smooth, parallel relationship with each other." Vol. 24, p. 658.

Although through the introduction of improved processes of manufacture, it gradually became possible to comb shorter and finer varieties of wool, and thus to manufacture worsted

goods of higher grade and better quality, approximating worsted to woollen goods, and removing the reason for any distinction between them in the matter of duties, the tariff laws prior to May 9, 1890, made a distinction in that respect between woollen and worsted goods, resting on the difference in the process of manufacture; but the raw material was, of course, always the same, namely, wool.

By the tariff acts of April 27, 1816, c. 107, 3 Stat. 310; of May 22, 1824, c. 136, 4 Stat. 25; May 19, 1828, c. 55, 4 Stat. 270; July 14, 1832, c. 227, 4 Stat. 583; August 30, 1842, c. 270, 5 Stat. 548, worsted stuff goods were recognized as manufactures of wool.

By the acts of July 30, 1846, c. 74, 9 Stat. 42; March 2, 1861, 12 Stat. 252, Res. 15; July 14, 1862, c. 163, 12 Stat. 543; June 30, 1864, c. 171, 13 Stat. 202; March 2, 1867, c. 197, 14 Stat. 559; March 3, 1883, c. 121, 22 Stat. 488, "manufactures of wool not otherwise provided for," were separated from "manufactures of worsteds not otherwise provided for," and distinct duties levied on each, while from 1861 distinct duties were levied on articles specifically described, whether manufactured of wool or worsted.

In *Seeberger* v. *Cahn*, 137 U. S. 95, 97, it was held that cloths popularly known as diagonals, and in trade as worsteds, were subject to duty under the act of March 3, 1883, as manufactures of worsted and not as manufactures of wool, the ground of decision being thus stated by Mr. Justice Gray delivering the opinion of the court:

"In the interpretation of the customs acts, nothing is better settled than that words are to receive their commercial meaning; and that when goods of a particular kind, which would otherwise be comprehended in a class, are subjected to a distinct rate of duty from that imposed upon the class generally, they are taken out of that class for the purpose of the assessment of duties.

"Of the two successive paragraphs in the customs act of 1883, upon which the parties respectively rely, the first imposes a certain scale of duties on 'all manufactures of wool of every description, made wholly or in part of wool, not spe-

cially enumerated or provided for in this act;' and the second imposes a lower scale of duties on 'all manufactures of every description, composed wholly or in part of worsted.' . . .

"Though worsted is doubtless a product of wool, and might in some aspects be considered a manufacture of wool, yet manufactures of worsted being subjected by the second paragraph to different duties from those imposed by the first paragraph on manufactures of wool, it necessarily follows that a manufacture of worsted cannot be considered as a manufacture of wool, within the meaning of this statute."

This decision was announced November 17, 1890, but the controversy had been pending for a long time in the courts, and on May 9, 1890, an act was passed, "providing for the classification of worsted cloths as woollens," by enacting: "That the Secretary of the Treasury be, and he hereby is, authorized and directed to classify as woollen cloths all imports of worsted cloth, whether known under the name of worsted cloth or under the name of worsteds or diagonals or otherwise." 26 Stat. 105, c. 200.

And since that date no distinction for customs purposes between woollens and worsteds has been recognized by Congress.

By the act of October 1, 1890, the same duties were levied upon worsted and woollen goods. Paragraphs 375 to 387 divided all wools, hair of the camel, goat, alpaca and other like animals into three classes, and levied certain duties on each class. Paragraphs 391 to 398 provided for certain duties on described articles, whether made wholly or in part of "wool, worsted, the hair of the camel, goat, alpaca or other animals."

By the act of August 27, 1894, wool was put on the free list (par. 685), and the paragraphs of the act of October 1, 1890, classifying wools and levying duties on the different classes, were omitted. Paragraphs 280 to 286, inclusive, of Schedule K of this act prescribed duties on certain enumerated articles, whether composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca or other animal.

There was no distinction made by either of these acts be-

tween manufactures of wool and manufactures of worsted for the purposes of duty, and the word "worsted" seems to have been used out of abundant caution and as conducive to greater certainty.

The act of July 24, 1897, commonly known as the Dingley act, omits the repetition of the words "wool, worsted, hair of the camel, goat, alpaca and other animals," and uses the single word "wool." Paragraph 383 provides: "Whenever, in any schedule of this act, the word 'wool' is used in connection with a manufactured article of which it is a component material, it shall be held to include wool or hair of the sheep, camel, goat, alpaca or other animal, whether manufactured by the woollen, worsted, felt or any other process." 30 Stat. 151, c. 11.

Manifestly the distinction on which the decision in *Seeberger* v. *Cahn* turned was done away with by the acts of October 1, 1890, and August 27, 1894, as well as by that of May 9, 1890, and there certainly is no imperative ground for its reinstatement by technical construction.

The reason for the postponing of the taking effect of the reduction of duties obviously had nothing to do with the process of manufacture, but related to the material of which the goods were composed, which material had been relieved from duty by paragraph 685 of the act.

Congress undoubtedly concluded that the manufacturers of goods from wool had laid in a large stock of material, which equitably they should be allowed a reasonable time to work off, and that there was probably on hand a large stock of goods, to dispose of which reasonable time should be allowed, rather than that the large dealers should be induced to bring in foreign goods at a cost which involved ruinous competition; while at the same time the wool growers ought to have their original market until they could adjust themselves to the new condition of things.

The specific rate was compensatory, and, when stricken out, and the duty on raw material abolished, a postponement was provided for in order to avoid injustice.

But the reason for postponing the reduction on manufact-

ures of wool, which, on the face of the act, we think properly imputable to Congress, is as applicable to worsted goods as to any other goods fabricated from wool.

It will be perceived that the acts of 1890 and 1894 did not levy a duty on "worsted dress goods," *eo nomine*, nor on worsted dress goods by commercial designation, nor on worsted dress goods as distinguished from woollen dress goods; but a duty on dress goods, whether made of "wool, worsted, the hair of the camel, goat, alpaca or other animals." The description is addressed to the quality and material of the goods, namely, women's and children's dress goods, made of wool, worsted, etc.

The principle then that the special designation of an article by its commercial meaning should prevail over general terms used in the same or a later act, has no application.

In *Barber* v. *Schell*, 107 U. S. 617, the words "cotton laces, cotton insertings," etc., used in the act of 1846, were held to be designations of articles by special description of quality and material, and the general provision of 1857, transferring to Schedule C "all manufactures composed wholly of cotton, which are bleached, printed or dyed," whereby a different duty was imposed on such goods, was held to apply. Mr. Justice Blatchford said: "The designations qualified by the word 'cotton' in the act of 1846 are designations of articles by special description, as contra-distinguished from descriptions by a commercial name or a name of trade. They are designations of quality and material." *Cadwalader* v. *Zeh*, 151 U. S. 171, 178.

It is argued that the same reasoning which brings worsted goods within the words "manufactures of wool," would also compel the inclusion of goods composed of the hair of the camel and other animals, confessedly not covered by the phrase.

Doubtless wool considered as the sheep's coat might be said to be the sheep's hair, and fleeces of the hair of the Angora goat, the Llama, the Alpaca, and other like animals, might be called their wool. In the Encyclopædia Britannica, (9th ed. vol. 24, p. 653,) under the title of "Wool and Woollen Manu-

factures," it is said: "Wool is a modified form of hair, distinguished by its slender, soft and wavy or curly structure, and by the highly imbricated or serrated surface of its filaments. The numerous varieties of the sheep are the most characteristic, as they are also by far the most important, producers of wool; but the sheep is by no means the only animal which yields wool employed for industrial purposes. The alpaca and other allied fibres obtained from the alpaca and its congeners in South America, the mohair yielded by the Angora goat and the soft, woolly hair of the camel are all wools of much industrial importance, while the most costly wool in the world is that yielded by the Cashmere goat of the Himalayan Mountains. At what point indeed it can be said that an animal fibre ceases to be hair and becomes wool it is impossible to determine, because in every characteristic the one class by imperceptible gradations merges into the other, so that a continuous chain can be formed from the finest and softest merino to the rigid bristles of the wild boar." G. A. 2834; *Lyon* v. *United States*, 8 U. S. App. 409, 413.

But the acts of 1890 and 1894, as well as prior tariff acts, distinguished the wool of the sheep from the hair of the camel, goat and other like animals, as raw materials. And there is nothing in this record from which to conclude that Congress felt obliged to make concessions by way of alleviating the effect of the act of 1894 on the production of the hair of the camel, the goat, the alpaca, and so on, in this country, or on manufactures thereof.

We think that the words "manufactures of wool," in paragraph 297, had relation to the raw material out of which the articles were made, and that as the material of worsted dress goods was wool, such goods fell within the paragraph.

Judgment of the Circuit Court of Appeals reversed; judgment of the Circuit Court also reversed, and the cause remanded to that court with a direction to affirm the decision of the Board of General Appraisers.